

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for staff-assisted rate case in Seminole County by CWS Communities d/b/a Palm Valley Utilities. | DOCKET NO. 090447-WS
ORDER NO. PSC-10-0406-PCO-WS
ISSUED: June 21, 2010

ORDER GRANTING INTERVENTION

On September 14, 2009, CWS Communities d/b/a Palm Valley Utilities (Palm Valley) filed an application for a staff-assisted rate case in Seminole County pursuant to Rule 25-30.455, Florida Administrative Code. The staff-assisted rate case is scheduled to appear before the Commission for proposed agency action on June 29, 2010.

Petition for Intervention

By petition dated April 19, 2010, Mr. Donald E. Hartwig filed a Petition to Intervene (Petition) in this docket. According to his Petition, Mr. Hartwig is a customer of Palm Valley Utilities, and has been actively involved in efforts addressing flow rate, management and efficiency over the past twelve years. Mr. Hartwig contends that to the extent that the proposed staff-assisted rate increase affects the community of Palm Valley, his interests will be affected.

Standards of Intervention

Pursuant to Rule 25-22.039, Florida Administrative Code, persons, other than the original parties to a pending proceeding, who have a substantial interest in the proceeding, and who desire to become parties may petition for leave to intervene. Petitions for leave to intervene must be filed at least five days before the evidentiary hearing, must conform with Rule 28-106.201(2), Florida Administrative Code, and must include allegations sufficient to demonstrate that the intervenor is entitled to participate in the proceeding as a matter of constitutional or statutory right or pursuant to Commission rule, or that the substantial interests of the intervenor are subject to determination or will be affected by the proceeding. Intervenors take the case as they find it.

To have standing, the intervenor must meet the two prong standing test in Agrico Chemical Company v. Department of Environmental Regulation, 406 So. 2d 478, 482 (Fla. 2nd DCA 1981). The intervenor must show (1) that he will suffer injury in fact which is of sufficient immediacy to entitle him to a Section 120.57 hearing, and (2) that this substantial injury is of a type or nature which the proceeding is designed to protect. The first aspect of the test deals with the degree of injury. The second deals with the nature of the injury. The "injury in fact" must be both real and immediate and not speculative or conjectural. International Jai-Alai Players Assn. v. Florida Pari-Mutuel Commission, 561 So. 2d 1224, 1225-26 (Fla. 3rd DCA 1990). See also, Village Park Mobile Home Assn., Inc. v. State Dept. of Business Regulation, 506 So. 2d 426, 434 (Fla. 1st DCA 1987), rev. den., 513 So. 2d 1063 (Fla. 1987) (speculation on the possible occurrence of injurious events is too remote).

DOCUMENT RECEIVED DATE

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Analysis & Ruling

It appears that Mr. Hartwig meets the two prong standing test in Agrico, in that he is a residential customer taking service from Palm Valley whose interests may be substantially affected by this proceeding. Accordingly, Mr. Hartwig's Petition to Intervene is granted. Pursuant to Rule 25-22.039, Florida Administrative Code, Mr. Hartwig takes the case as he finds it. As an intervenor in this proceeding, Mr. Hartwig is expected to comply with the same standards, rules, statutes, and procedures as all other parties to this proceeding, and shall be required to stay within the scope of this proceeding as it has been established through the issues, rules, and governing statutes.

Based on the foregoing, it is

ORDERED by Commissioner Nathan A. Skop, as Prehearing Officer, that the Petition to Intervene is granted with respect to Mr. Donald E. Hartwig as set forth herein. It is further

ORDERED that all parties to this proceeding shall furnish copies of all testimony, exhibits, pleadings and other documents which may hereinafter be filed in this proceeding, to:

Mr. Donald E. Hartwig
3906 Needle Palm Place
Oviedo, Florida 32765-7601

By ORDER of Commissioner Nathan A. Skop, as Prehearing Officer, this 21st day of
June, 2010.



NATHAN A. SKOP
Commissioner and Prehearing Officer

(S E A L)

LCB

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.