

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Request for approval of amendment to connection/transfer sheets, increase in returned check charge, amendment to miscellaneous service charges, increase in meter installation charges, and imposition of new tap-in fee, in Marion County, by East Marion Sanitary Systems Inc.

DOCKET NO. 080562-WU
ORDER NO. PSC-10-0568-PCO-WU
ISSUED: September 15, 2010

ORDER GRANTING INTERVENTION

On August 19, 2008, East Marion Sanitary Systems, Inc. (East Marion or Utility) petitioned the Commission for changes in its tariff. While considering East Marion's request at its April 7, 2009, Agenda Conference, the Commission heard from a customer who represented that several customers had requested irrigation meters prior to the tariff change and that East Marion had refused to connect the customer's irrigation meter at the old tariff rate.

By Order No. PSC-09-0263-TRF-WU (tariff order), issued April 27, 2009, East Marion was permitted to change its tariffs to increase certain rates but was required to connect certain customers at the prior tariffed rate. East Marion protested that portion of the tariff order relating to the connection of customers at the prior tariffed rate. Pursuant to a request by the Utility and the intervenors in this docket, the hearing and procedural schedule has been abated pending settlement discussions.

Petition for Intervention

By petition dated April 19, 2010, Ms. Millicent Mallon (Petitioner) filed a Petition to Intervene (Petition) in this docket. According to her Petition, Ms. Mallon is a customer of East Marion and is entitled to an irrigation meter at the prior tariffed rate. Petitioner states that her deceased husband verbally, as well as in writing, requested East Marion to provide Petitioner with an irrigation meter for the \$70.00 installation charge. These requests were made prior to the April 7, 2009 deadline imposed by Order No. PSC-09-0263-TRF-WU. East Marion refused to provide Petitioner with an application, and thus refused to provide Petitioner with an irrigation meter. Ms. Mallon concludes that this is the appropriate proceeding for her to present evidence and to seek relief from the Utility's refusal to properly install an irrigation meter for the prior tariffed rate.

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

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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. 2d 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, Florida Statutes, 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. 3d 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).

Analysis & Ruling

It appears that Ms. Mallon meets the two-prong standing test in Agrico, in that she is a residential customer taking service from East Marion whose interests may be substantially affected by this proceeding. Accordingly, Ms. Mallon's Petition to Intervene is granted. Pursuant to Rule 25-22.039, Florida Administrative Code, Ms. Mallon takes the case as she finds it. As an intervenor in this proceeding, Ms. Mallon 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 Lisa Polak Edgar, as Prehearing Officer, that the Petition to Intervene is granted with respect to Millicent Mallon 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:

Ms. Millicent Mallon
1075 NE 130th Court
Silver Springs, FL 34488

By ORDER of Commissioner Lisa Polak Edgar, as Prehearing Officer, this 15th day of September, 2010.


LISA POLAK EDGAR
Commissioner and Prehearing Officer

(S E A L)

LCB/klj

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.