

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for increase in water/wastewater rates in Alachua, Brevard, DeSoto, Hardee, Highlands, Lake, Lee, Marion, Orange, Palm Beach, Pasco, Polk, Putnam, Seminole, Sumter, Volusia, and Washington Counties by Aqua Utilities Florida, Inc.

DOCKET NO. 100330-WS
ORDER NO. PSC-11-0206-PCO-WS
ISSUED: April 25, 2011

ORDER GRANTING INTERVENTION

BY THE COMMISSION:

On April 4, 2011, pursuant to Rules 25-22.039 and 28-106.205, Florida Administrative Code (F.A.C.), Ms. Lucy Wambsgan filed her Petition to Intervene (Petition) in the above-captioned proceeding, stating that her substantial interests would be affected by Aqua Utilities Florida, Inc.'s application for increased water and wastewater rates. In that Petition, pursuant to Rules 28-106.205 and 28-106.201(2)(d), F.A.C., Ms. Wambsgan stated that one of the disputed issues of material fact was as follows:

Should the Commission encourage AUF to divest its systems to counties and municipalities to facilitate consumers receiving quality water at an affordable price?

On April 11, 2011, Aqua Utilities Florida, Inc. (AUF) timely filed its Response to Petition to Intervene by Ms. Lucy Wambsgan (Response). In its Response, AUF states that it does not object to her intervention, but does object to that issue, and requests the Commission to clarify its grant of intervention in the following two ways:

1. Ms. Wambsgan's participation should be expressly limited to those issues within the jurisdiction and scope of this rate proceeding; and
2. It should be made clear that Ms. Wambsgan takes the case as she finds it.

In her Petition, Ms. Wambsgan states that she is a residential water and wastewater customer of AUF's Zephyr Shores system. Because she can be greatly affected by increased water and wastewater rates, Ms. Wambsgan states that she has a substantial interest in this case. Moreover, because of the cross-subsidization issues in this docket, Ms. Wambsgan alleges that the Office of Public Counsel cannot adequately represent her interests.

To have standing, an intervenor must meet the two-prong standing test set forth in Agrico Chemical Company v. Department of Environmental Regulation, 406 So. 2d 478,

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482 (Fla. 2d DCA 1981), i.e., he 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. Because Ms. Wambsgan has shown how her substantial interests may be affected in this proceeding, and that they are of the nature that this proceeding is designed to protect, her Petition for Intervention shall be granted. Based on the above, all parties to this docket shall furnish copies of all testimony, exhibits, pleadings and other documents that are hereinafter filed in this proceeding to her attorney:

Kelly Sullivan, Esquire
570 Osprey Lakes Circle
Chuluota, FL 32766-6658

As regards AUF's requests for clarification, pursuant to Rule 25-22.039, F.A.C., Ms. Wambsgan takes the case as she finds it. Also, as regards the appropriate issues, the Commission has repeatedly noted that the granting of intervention will not be construed to allow issues outside the jurisdiction and scope of the rate proceeding being conducted pursuant to Section 367.081(8), F.S.¹ AUF has requested that its application for increased rates be processed using the proposed agency action (PAA) procedures. Any final disputed issues of material fact will be based on any protest of the PAA Order in accordance with Section 120.57(1), Florida Statutes, and as approved by the Commission in any subsequent proceedings.

Based on the foregoing, it is

ORDERED by Chairman Art Graham, as Prehearing Officer, that the Petition to Intervene by Ms. Lucy Wambsgan is hereby granted. 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 Kelly Sullivan, Esquire, 570 Osprey Lakes Circle, Chuluota, FL 32766-6658. It is further

ORDERED that Ms. Lucy Wambsgan takes the case as she finds it.

¹ See Order No. PSC-09-0280-PCO-EI, issued April 29, 2009, in Docket No. 080677-EI, In re: Petition for increase in rates by Florida Power and Light Company; and Order No. 24486, issued May 7, 1991, in Docket No. 900816-WS, In re: Petition for a rate increase in Martin County by Sailfish Point Utility Corporation.

By ORDER of Chairman Art Graham, as Presiding Officer, this 25th day of
April, 2011.



ART GRAHAM
Chairman and Presiding Officer
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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; 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.