

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for declaratory statement  
regarding the applicability of approved water  
service availability charges in Lake County, by  
Harbor Waterworks, Inc.

DOCKET NO. 20170259-WU  
ORDER NO. PSC-2018-0083-PCO-WU  
ISSUED: February 16, 2018

ORDER GRANTING HARBOR HILLS DEVELOPMENT LP AND HARBOR HILLS  
HOMEOWNERS' ASSOCIATION, INC.'S PETITION TO INTERVENE

On December 12, 2017, Harbor Waterworks, Inc., (Harbor Waterworks) a water and wastewater utility regulated by the Commission, filed a Petition for Declaratory Statement. Harbor Waterworks requests a declaratory statement from this Commission on whether Commission-approved service availability charges are applicable to its irrigation connection for new homes in a residential development served by Harbor Waterworks.

On January 4, 2018, Harbor Hills Development LP (Development) and Harbor Hills Homeowners' Association, Inc., (Association) (collectively the Intervenors) filed a Petition to Intervene and requested full party status in this declaratory statement proceeding. Harbor Waterworks did not file a response to the Petition to Intervene.

Petition to Intervene

Intervenors state that the Development would incur substantially increased charges owed to Harbor Waterworks if the Commission issues the declaratory statement requested by Harbor Waterworks. The Development also asserts that to the extent that any statement issued by the Commission impacts future owners of the properties, the Development has a substantial interest that will be affected and that the Development is "the proper entity to speak on their behalf."

The Association represents the current owners of the property in the Harbor Hills community. The Association further states that Harbor Waterworks seeks to apply irrigation connection charges to the current homeowners in the community. The Association asserts that it has a substantial interest that will be affected by the disposition of the Petition for Declaratory Statement because the homeowners would incur substantially increased charges if the Commission issues the declaratory statement requested by Harbor Waterworks.

Intervenors state that the Development's and the Association's interests are of sufficient immediacy to entitle them to participate in this proceeding and are the type that this proceeding is designed to protect.

Standards for Intervention

Rule 28-105.0027(1), F.A.C., sets forth the standards for the filing of a petition for leave to intervene in a declaratory statement proceeding. The rule states:

Persons other than original parties to a pending proceeding whose substantial interests will be affected by the disposition of the declaratory statement and who desire to become parties may move the presiding officer for leave to intervene. The presiding officer shall allow for intervention of persons meeting the requirements for intervention of this rule.

Subparagraph (2)(c) of Rule 28-105.0027, F.A.C., states that the motion to intervene shall include the following information:

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 agency rule, or that the substantial interests of the intervenor are subject to determination or will be affected by the declaratory statement.

To have standing in an administrative proceeding, an intervenor must meet the standing criteria set forth in *Agrico Chemical Co. v. Environmental Regulation*, 406 So. 2d 478, 482 (Fla. 2d DCA 1981). The intervenor must show that: (1) it will suffer injury in fact, which is of sufficient immediacy to entitle them to a Section 120.57, Florida Statutes (F.S.), hearing; and (2) the substantial injury is of a type or nature which the proceeding is designed to protect. The first element addresses the degree of the injury. The second requirement for standing addresses the nature of the injury. The injury must be both real and immediate and not speculative or conjectural. *Int'l Jai-Alai Players v. Florida Pari-Mutuel Comm'n*, 561 So. 2d 1224, 1225-26 (Fla. 3d DCA 1990); *Village Park Mobile Home Assn. Inc. v. State Dep't of Business Regulation*, 506 So. 2d 426 (Fla. 1st DCA 1987) (speculation on the possible occurrence of injurious events is too remote).

The test for associational standing was established in *Florida Home Builders v. Dep't of Labor and Employment Security*, 412 So. 2d 351 (Fla. 1982), and *Farmworker Rights Org., Inc. v. Dep't of Health and Rehabilitative Services*, 417 So. 2d 753 (Fla. 1st DCA 1982), and is based on the basic standing principles established in *Agrico*. Associational standing may be attained where: (1) the association demonstrates that a substantial number of its members may be substantially affected by the Commission's decision in a matter; (2) the subject matter of the proceeding is within the association's general scope of interest and activity; and (3) the relief requested is of a type appropriate for the association to receive on behalf of its members.

## Analysis

### 1. The Development

The Development states in its Petition to Intervene that it is the developer of Phase 6 of the Harbor Hills community and would be incurring substantially increased charges if this Commission issues the requested declaratory statement. It also states that in the Petition for Declaratory Statement Harbor Waterworks identifies the Development as the entity that “has contested the separate charges for the irrigation service” and “has been and is currently building and selling homes in the Phase 6 area.”<sup>1</sup>

On October 25, 2017, Harbor Waterworks provided a statement of charges directly addressed to the Development indicating the exact amount of the service availability charges and that these fees must be paid by the Development prior to installation of the irrigation water service. A developer pays service availability charges to a utility during the construction process. I find that the injury is immediate as shown by the nature of the October 25, 2017 statement from the utility to the Development. The Development has met the first requirement for standing established in *Agrico* that it will suffer injury in fact that is immediate.

I also find that the Development meets the second element of standing in *Agrico*. Depending on the disposition of the petition, this declaratory statement is the type of proceeding which could impact the monetary interests of the Development. The Declaratory Statement, if granted, will declare the outcome of the applicability of service availability charges and may substantially affect the Development’s financial obligations to the utility.

### 2. The Association

The Association asserts that it is a homeowners association representing the current owners of Phase 6 in Harbor Hills. It contends that the current members of the Association have a substantial interest that will be affected by the disposition of the declaratory statement because homeowners would be incurring substantially increased charges should this Commission issue the declaratory statement as requested by Harbor Waterworks. The Association further states that its interests are of sufficient immediacy to entitle it to participate in this proceeding and are of the type that this proceeding is designed to protect.

As stated in *Florida Home Builders*, to have associational standing in an administrative proceeding, an association must first demonstrate that a substantial number of its members are substantially affected by the proceeding. Neither a specific number, nor percentage of members is required for standing. *Hillsborough County v. Florida Restaurant Ass’n Inc.*, 603 So. 2d 587,

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<sup>1</sup> The Development also states that it is the proper entity to speak on behalf of the future owners of the Phase 6 properties that may be impacted due to a decision by the Commission on the declaratory statement. This future interest does not afford standing to the Development as it is too speculative. *See Int’l Jai-Alai Players v. Florida Pari-Mutuel Comm’n*, 561 So. 2d 1224, 1225-26 (Fla. 3d DCA 1990); *Village Park Mobile Home Assn. Inc. v. State Dep’t of Business Regulation*, 506 So. 2d 426 (Fla. 1st DCA 1987).

589 (Fla. 2d DCA 1992). The Association asserts that it is a homeowners' association for the current property owners. These members of the Association may be substantially affected by this declaratory statement proceeding if granted. Depending on the disposition of the Petition for Declaratory Statement, these members may be assessed Harbor Waterworks' service availability charges not previously applied to them. I find that the Association meets the first requirement for associational standing.

The second element of associational standing is whether the subject matter of this proceeding is within the Association's general scope of interest and activity. The Association represents its members' interests and concerns. They are water users who purchase water from Harbor Waterworks. The interests of the Association and its members will be directly affected by the outcome of this declaratory statement proceeding. I find that the Association meets the second element required for associational standing.

The third criteria to establish associational standing is whether the relief requested by the Association is of a type appropriate for an association to obtain on behalf of its members. In the normal course of business, homeowner associations seek relief and benefits for their members. If this Commission issues the declaratory statement as requested by Harbor Waterworks, service availability charges may apply to the homeowners. The Association seeks relief from these charges for its members. Thus, I find that the relief sought by the Association is of a type appropriate for an association to obtain on behalf of its members.

#### Ruling

I find that the Development meets the standing test established in *Agrico* and that the Association satisfies the associational standing requirements set forth in *Florida Home Builders*. Therefore, the Petition to Intervene is granted.

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Based on the foregoing, it is

ORDERED by Commissioner Donald J. Polmann, as Prehearing Officer, that Harbor Hills Development LP and Harbor Hills Homeowners' Association, Inc.'s Petition to Intervene is hereby granted as set forth in the body of this Order. It is further

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

Samual A. Miller, Esq. and Cecelia Bonifay, Esq.

Akerman LLP

420 South Orange Avenue

Suite 1200

Orlando, FL 32708

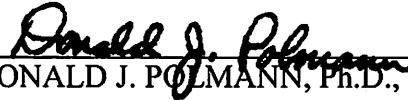
Telephone: 407-423-4000

Facsimile: 407-254-3783

E-Mail: samual.miller@akerman.com

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By ORDER of Commissioner Donald J. Polmann, as Prehearing Officer, this 16th day of February, 2018.



DONALD J. POLMANN, Ph.D., P.E.  
Commissioner and Prehearing Officer  
Florida Public Service Commission  
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Copies furnished: A copy of this document is provided to the parties of record at the time of issuance and, if applicable, interested persons.

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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.