

**STATE OF FLORIDA
PUBLIC SERVICE COMMISSION**

In re: Petition for Declaratory Statement)
Regarding the Applicability of the Approved)
Water Service Availability Charges by) Docket No.: 20170259-WU
Harbor Waterworks, Inc. in Lake County)

**HARBOR HILLS DEVELOPMENT AND HARBOR HILLS HOA'S
RESPONSE TO PETITION FOR DECLARATORY STATEMENT**

Pursuant to Rules 28-105.001 *et seq.*, Florida Administrative Code, Harbor Hills Development LP (“Harbor Hills Development”) and Harbor Hills Homeowners' Association, Inc. (“Harbor Hills HOA”), through their undersigned counsel, file this Response to the Petition for Declaratory Statement filed by Harbor Waterworks, Inc. (“Harbor Waterworks”).

The Petition for Declaratory Statement is the incorrect procedural mechanism for the relief Harbor Waterworks seeks. The PSC should not allow Harbor Waterworks to use the declaratory statement procedures as an “end around” of the application procedures required for new charges and rates. Additionally, there is not any basis in any order, tariff, rule, etc., for the imposition of the new connection charges that Harbor Waterworks seeks to impose. Finally, Harbor Waterworks has not demonstrated or provided any evidence to suggest that the new charges are financially necessary, which is particularly relevant given that Harbor Waterworks’ only stated ground for the new connection charges is the historical water usage in the neighboring properties.

Accordingly, the PSC should deny the Petition for Declaratory Statement.

FACTUAL AND PROCEDURAL BACKGROUND

1. In June 1990, PSC entered an order approving, among other things, certain charges for connections related to the subject residential lots located near Lake Griffin in Lake County, Florida. *See* PSC Order No. 23039 (the “PSC June 1990 Order”).

2. The PSC June 1990 Order governs Harbor Waterworks' rights with respect to rates and charges, which Order has never been amended, revised, or modified in this regard.

3. The PSC June 1990 Order was originally applicable to Lake Griffin Utilities, Inc. Harbor Waterworks is the successor after a transition in ownership in the early 1990's, which transition is not relevant for purposes of the issues before the PSC on Harbor Waterworks' Petition for Declaratory Statement.

4. In October 2017, for the first time, Harbor Waterworks sought to impose new connection charges. Specifically, Harbor Waterworks sought to impose a wholly new and separate charge, related to irrigation, to new homes in what is known as Phase 6 of the Harbor Hills Community.

5. Harbor Hills Development and Harbor Hills HOA immediately disputed those new charges because they were not permitted under the PSC June 1990 Order or any applicable tariff.

6. On December 12, 2017, Harbor Waterworks filed its Petition for Declaratory Statement with the Florida Public Service Commission regarding the applicability of those new connection charges.

7. Harbor Hills Development LP and Harbor Hills Homeowners' Association, Inc. timely filed a petition to intervene. This past Friday, February 16, 2018, the Florida Public Service Commission granted that petition to intervene.

ARGUMENT

The Petition for Declaratory Statement is Not the Proper Procedural Mechanism for the New Irrigation Charges

Declaratory statements are limited in nature and are intended to be used only for a declaration regarding currently established statutory, rule, or related rights. Specifically, the

Florida Administrative Code provides in pertinent part regarding the purpose of a petition for a declaratory statement:

A declaratory statement is a means for resolving a controversy or answering questions or doubts concerning the applicability of statutory provisions, rules, or orders over which the agency has authority. A petition for declaratory statement may be used to resolve questions or doubts as to how the statutes, rules, or orders may apply to the petitioner's particular circumstances. A declaratory statement is not the appropriate means for determining the conduct of another person.

Fla. Admin. Code 28-105.001. Contrary to the limited nature of declaratory statements, the Petition for Declaratory Statement does not seek interpretation of current statutes, rules, or orders. Harbor Waterworks never actually identifies the statute, rule, or order that needs to be applied or interpreted. Instead, the Petition for Declaratory Statement seeks permission to impose and collect charges that are not contained in the PSC June 1990 Order. In fact, after trying to argue that the new charges are necessary because of water usage on neighboring properties, in the event that such arguments are not successful, Harbor Waterworks seeks approval of the new charges for all future homes, which request clearly an attempted "end around" of the application process for new rates and charges. Specifically, Harbor Waterworks requests as follows:

25. In the event the Commission determines that the separate irrigation connection should not be charged the additional service availability charges, alternatively, Harbor requests that the Commission consider additional Service Availability Charges for all future connections based upon the actual average residential usage of the customers. These additional charges would be based upon multiples of the ERC. For example, future customers would be required to pay 3 – 4 times the existing service availability charges.

Petition for Declaratory Statement, 25. If the 1990 rates and charges are no longer appropriate or feasible, then Harbor Waterworks should use the proper procedural mechanisms, not a petition for declaratory statement.

**Harbor Waterworks
is Not Entitled to Charge a Separate
Connection or Service Availability Charge**

The PSC should enforce the charges as contained (and limited) in the PSC June 1990 Order. Pursuant to the Florida Administrative Code and the PSC June 1990 Order, Harbor Waterworks is prohibited from imposing the new set of connection charges that were not included in the June 1990 Order. The PSC, in the PSC June 1990 Order, delineated all of the charges and rates allowed as follows:

Lake Griffin, which is a developer-owned utility, will install all of the lines. The Utility requested service availability charges designed to place the Utility at a 75% contribution level at build-out. The Utility's proposed charges and the charges approved by the Commission are as follow:

	<u>Utility Proposed</u>	<u>Commission Approved</u>
<u>Plant Capacity Charge, per ERC</u>		
(1 ERC = 350 GPD)	\$ 275	\$ 263
<u>Main Extension Charge, per ERC</u>		
	457	457
<u>Meter Installation Fee</u>		
Up to 1"	85	85
Over 1"	Actual Cost	Actual Cost
<u>Tap Fee</u>		
Up to 1"	100	100
Over 1"	Actual Cost	Actual Cost

PSC June 1990 Order, p. 4.

The Petition for Declaratory Statement seeks permission to impose and collect charges that are not contained in the PSC June 1990 Order. Specifically, the Invoice attached to the Petition for Declaratory Statement seeks permission to impose the following new charges that were not being charged for any other lots at the subject property until Fall 2018:

To have service connected; the following fees per the Public Service Commission approved tariffs must be paid prior to installation per connection:

<u>Water:</u>	
Meter Installation Fee	\$ 85.00
Plant Capacity:	\$ 263.00
Service Installation Charge:	\$ 100.00
Main Extension Charge	\$ 457.00
AFPI Charge	\$ 560.92
<hr/>	
Total Water Fees	\$ 1,465.92
<u>Irrigation:</u>	
Meter Installation Fee	\$ 85.00
Plant Capacity:	\$ 263.00
Service Installation Charge:	\$ 100.00
Main Extension Charge	\$ 457.00
AFPI Charge	\$ 560.92
<hr/>	
Total Irrigation Fees	\$ 1,465.92
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Total Fees	\$ 2,931.84

Petition for Declaratory Statement, Attachment. These new charges are significant because they effectively double the connection charges that were previously being imposed and collected.

To the extent Harbor Waterworks wants to collect charges not contained in the PSC June 1990 Order and any operative tariff, the appropriate remedy is not a petition for declaratory statement; rather, in order to impose such new charges, Harbor Waterworks should proceed with an application seeking approval of such charges and rates. The application process, of course, is relatively more involved when compared with the petition for declaratory statement process. Nevertheless, that process provides protections to Harbor Hills Development, Harbor Hills HOA, and others and allows the PSC to fulfill its role with respect to the utilities. Instead, Harbor Waterworks appears to be using the declaratory statement mechanism as an impermissible way to avoid the application process. Accordingly, the PSC should deny the Petition for Declaratory Statement and require utility to file the appropriate application.

The separate charges for irrigation connections that Harbor Waterworks seeks to impose and collect are not permitted under the applicable rules and are not warranted. There are no Rules

in the Florida Administrative Code allowing for imposition of a completely new set of connection charges that have not been approved by the PSC. Additionally, as indicated in the Petition for Declaratory Statement, while there may be separate lines for irrigation service lines, the irrigation lines are "... then interconnected into the potable water mains in the subdivision." Petition for Declaratory Statement, ¶ 12. Given that there is only one connection to the utility's main, there should only be one connection charge imposed.

Moreover, beyond a few conclusory statements, Harbor Waterworks has not provided any evidence in the Petition for Declaratory Statement demonstrating how the additional charges for irrigation actually relate to the cost incurred by the utility. Such evidence would be particularly relevant when the basis for such new charges is not any order, tariff, rule, etc., but the claimed historical water usage in the neighboring properties. Such arguments regarding usage in the neighboring properties would be better suited for a rate application, not a petition seeking a declaration regarding a right to impose a new connection charges. Such evidence also would be important considering that the most recent annual report for Harbor Waterworks appears to show a rate of return for water services in excess of 24%.¹ *See* Annual Report for Harbor Waterworks, p. F-4.² Such returns, of course, suggest that additional separate connection charges (effectively doubling those currently in place) are not necessary.

CONCLUSION

Harbor Waterworks should not be permitted to use the declaratory statement procedures as an "end around" of the application procedures required for new charges and rates. Additionally,

¹ While the water rate of return was over 24%, wastewater was approximately 6%. Nevertheless, this merely shows why a transparent application seeking permission to impose these new charges is a more appropriate procedural mechanism than a petition for declaratory statement.

² While the cover page to the annual report indicates that it is for the year ending December 31, 2015, the "YEAR OF REPORT" in the internal headers state "December 31, 2016."

there is not any basis in any order, tariff, rule, etc., for the imposition of the new connection charge that Harbor Waterworks seeks to impose. Instead, the PSC should enforce the PSC June 1990 Order as written. Finally, Harbor Waterworks has not demonstrated or provided any evidence to suggest that the new charges are financially necessary, which is particularly relevant given that Harbor Waterworks' only stated ground for the new connection charges is the historical water usage in the neighboring properties and not any evidence regarding actual costs related to the requested new connection fees.

Accordingly, the PSC should deny the Petition for Declaratory Statement.

Dated: February 19, 2018

Respectfully submitted,

/s/ Samuel A. Miller

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of this document was furnished by **email** this 19th day of February, 2018 to:

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