

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for increase in water rates in
Highlands County by HC Waterworks, Inc.

DOCKET NO. 20190166-WU

FILED: June 12, 2020

**PETITION PROTESTING PORTIONS OF THE PROPOSED AGENCY ACTION AND
MOTION FOR CLARIFICATION**

The Citizens of the State of Florida (Citizens), by and through the Office of Public Counsel (OPC), pursuant to Sections 120.57 and 120.80(13)(b), Florida Statutes (F.S.), and Rules 25-22.029 and 28-106.201, Florida Administrative Code (F.A.C.), file this limited protest of, and request for clarification on, the Florida Public Service Commission's (Commission's) Order No. PSC-2020-0168-PAA-WS, issued May 22, 2020 ("PAA Order"). In the PAA Order, the Commission found that HC Waterworks, Inc.'s (the "Utility" or "HC") overall quality of service is unsatisfactory, and "require[d] that HC engage with its customers and the Office of Public Counsel in an ongoing effort to address the Utility's service quality and communication issues." PAA Order p. 24. However, the Order does not require Commission Staff to participate in such efforts to address the Utility's quality issues, does not contain a method for the Commission to monitor or follow-up the Utility's compliance with the requirement, and does not otherwise provide an accountability or enforcement measure for the requirement in the order, nor any consequences for noncompliance. Further, the Commission did not order HC to subsequently report to the Commission its compliance with the order. In support of their Petition, Citizens state as follows:

1. The name and address of the agency affected and the agency's file number:

Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850
Docket No. 20190166-WU

2. The Citizens include the customers of HC whose substantial interests are affected by the PAA Order because the PAA Order authorizes HC to collect from its customers a rate increase and requires HC to take certain actions to address its service quality and communication issues related to its unsatisfactory quality of service.

3. Pursuant to Section 350.0611, F.S., the Citizens who file this Petition are represented by the Office of Public Counsel with the following address and telephone number:

Office of Public Counsel
c/o The Florida Legislature
111 West Madison Street, Room 812
Tallahassee, Florida 32399-1400
Telephone No. (850) 488-9330

4. The Citizens obtained a copy of the PAA Order via email on or about May 22, 2020.

5. At this time, the disputed legal issues and disputed issues of material fact, including a concise statement of the ultimate facts alleged, and those specific facts which Citizens contend warrant modification of the PAA Order, are discussed below.

6. HC requested a substantial rate increase for its water operations in Highlands County Florida in 2019. On May 22, 2020, the PAA Order awarded HC a rate increase of approximately 33.78% for the average residential customer, or an increase of \$15.27 per month for the average residential customer who uses roughly 4,000 gallons per month. The PAA Order also documented the Commission's finding that HC's overall quality of service was unsatisfactory and ordered HC to engage with its customers and the Office of Public Counsel to address the deficiency. However, the PAA Order does not include any provision for HC to inform the Commission of any efforts it takes to comply with the Commission's Order, such as a status report detailing its actions, nor does it contain a time certain by which said report or any compliance information must be filed with the Commission. The Citizens object to the lack of either an accountability tracking measure or an enforcement

mechanism for noncompliance related to the requirements in the PAA Order. The Citizens further submit that the PSC's Staff, including but not limited to its Engineering Staff, should be an integral part of the engagement required by HC to address its service quality and communication issues.¹

The scope of the administrative hearing should be limited to whether an accountability and enforcement provision should be included in the Final Order, whether Commission Staff should participate in efforts to address the Utility's service issues, and whether reporting requirements and compliance deadlines regarding the Utility's compliance with the order should be imposed. Citizens request the Commission clarify the scope of the proceeding.

7. Therefore, pursuant to Section 120.80(13)(b), F.S., Citizens object to and protest the applicable portions of the PAA Order only as it relates to the lack of date-specific reporting and accountability measures for the engagement required of HC in the PAA Order. Further, Citizens protest any reasonably and necessarily related legal, policy and fact issues resulting from the specifically identified areas of protest. Further, Citizens' reserve their right to fully participate in the hearing process to address any issues identified in any other party's protest or cross-petition. Below is a preliminary list of issues identified by Citizens for UIF as being ripe for hearing in this protest.

¹ As an example of the need for clarification and the inclusion of some form of accountability mechanism in the PAA Order, preliminary discussion between the parties suggests a material difference in each party's understanding of the meaning and intent of the subject ordering paragraph on page twenty-four the PAA Order. The parties also discussed the effects of COVID-19 related restrictions on some forms of customer engagement, such as meetings in groups larger than ten people.

Statement of Disputed Facts and Issues

Legal and Policy Issues:

- Issue 1. Should the Commission include in its Order accountability, enforcement, and deadline date provisions when it issues an order which requires a party to take certain action?

Statement of the Ultimate Facts Alleged

The ultimate facts from each of the issues discussed above will vary depending upon the testimony and discovery brought forth in this hearing; however, effective, date-certain reporting provisions should be the result, and there should be monetary consequences for the failure to comply with the Commission's order.

Section 367.011(2), F.S., grants the Commission jurisdiction over water utilities regarding service and rates. Pursuant to Sections 367.081, 367.0812 and 367.121, F.S., the Commission has the authority and duty to prescribe and fix just and reasonable rates and charges, and also has the authority to require reports from a utility. In the broadest terms, the Citizens' ultimate factual allegation is that the PAA Order contains a requirement for HC to take certain action, yet contains no provisions for ensuring or confirming compliance. As such, the order may not adequately incentivize HC to comply with the requirement to "engage with customers" and render satisfactory customer service.² In other words, there is a risk of noncompliance with the order as phrased, and there is a lack of language in the order to enforce its requirements and ensure the customers actually receive the remedy ordered by the Commission.³

² Further evidence of the need for clarification and Staff involvement in the order for engagement is that OPC has observed that post-Agenda docket correspondence indicates there is a risk of a chilling effect on customers' ability to seek assistance from their local officials where a utility alone attempts to instruct a local official in his behavior. Florida statutes do not grant any utility authority over whether and how a County Commissioner exercises his constitutional right to communicate with the regulatory body which oversees utilities.

³ Citizens seek to avoid the prospect of customers receiving relief tantamount to an empty remedy due to the lack of an accountability provision in the ordering paragraph regarding engagement by HC. *Cf., Haga v. Clay Hyder Trucking*

The disputed issues of law and policy delineated in and by Citizens' protest should be interpreted broadly in order to effectuate full discovery on the disputed issues, thereby allowing the parties to adequately determine the scope of the issues for consideration and determination. Citizens' protest encompasses any additional issues logically arising from the specifically identified areas, including related issues that may arise during the process of discovery issued in this case. Further, Citizens reserve the right to fully participate in the hearing process, take positions and file testimony on any additional issues raised by any other party's protest or cross-petition, and resolve any issues which come to light during the pendency of this docket.

Citizens are entitled to a *de novo* proceeding on the disputed issues of material fact raised in any protest of the PAA Order. Citizens maintain that HC has the burden of proof in all aspects of the requested evidentiary hearing pursuant to Section 120.57(1), F.S., and if the burden of proof is not satisfied, the disputed issues of material fact must be resolved in favor of the Utility's ratepayers.

By Order No. PSC-2020-0168-PAA-WS, protests of the PAA Order shall be filed with the Office of Commission Clerk no later than the close of business on June 12, 2020. This Petition has, therefore, been timely filed.

Sections 367.081 and 367.121, F.S., are the specific statutes that require modification of the PAA Order.

Lines, 397 So. 2d 428, 432 (Fla. 1st DCA 1981)(reversing and remanding with instructions an order which granted a party an inappropriate form of relief which may not result in the court's intended effect).

Citizens request that the Commission take the following actions with respect to this limited protest to the PAA Order and Motion for Clarification:

- a) Include accountability and enforcement provisions in its Final Order regarding the Utility's compliance with the provisions relating to engagement to address service quality and communication issues.
- b) Include Commission Staff as a participant in efforts to address the Utility's service issues.
- c) Include reporting requirements and deadlines regarding the Utility's compliance with the order to address quality and communication issues. Order HC to file an initial status report within 90 days of the date the Final Order is issued in this docket related to its efforts to engage with customers, Commission Staff and OPC to address the service quality and communication issues.
- d) Establish a hearing schedule to resolve the disputed issues described above, including any additional issues raised by a party's protest or cross-protest and on any issues which come to light during the pendency of this docket.

Citizens have contacted the parties to this proceeding. HC Waterworks, Inc. informed the undersigned it does not object to some clarification of the order concerning engagement with its customers and the Office of Public Counsel, and is open to working with Citizens to propose terms regarding clarification.

WHEREFORE, the Citizens hereby submit their limited protest and objection to Commission Order No. PSC-2020-0168-PAA-WS and their Motion for Clarification, as provided above, and respectfully petition the Commission to conduct a formal evidentiary hearing under the provisions of

Section 120.57, F.S., at a convenient time within or as close as practical to the Utility's certificated service area. Further, Citizens request clarification of the PAA Order.

Respectfully Submitted,

J.R. Kelly
Public Counsel

/s/ Stephanie A. Morse
Stephanie A. Morse
Associate Public Counsel
Florida Bar No. 0068713

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Attorneys for the Citizens
of the State of Florida

CERTIFICATE OF SERVICE

DOCKET NO. 20190166-WU

I, **HEREBY CERTIFY** that a true and correct copy of the Office of Public Counsel's Petition Protesting Portions of the Proposed Agency Action and Motion for Clarification has been furnished by electronic mail to the following parties on this 12th day of June, 2020.

HC Waterworks, Inc.
Mr. Troy Rendell
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Public Service Commission
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Kurt Schrader
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/s/ Stephanie A. Morse
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