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COMMISSION
CLERK

IN RE: APPLICATION FOR ORIGINAL DOCKET NO. 110019- WS CERTIFICATE FOR AN EXISTING WASTEWATER SYSTEM, REQUEST FOR INITIAL RATES AND CHARGES FOR HARBOR HILLS UTILITIES, L.P.'S WASTEWATER SYSTEM, AMENDMENT OF WASTEWATER CERTIFICATE NO. 120-S TO INCLUDE HARBOR HILLS UTILITIES, L. P'S WASTEWATER SERVICE AREA; AND APPLICATION FOR APPROVAL OF TRANSFER OF HARBOR HILLS UTILITIES, L.P.'S WATER SYSTEM TO AQUA UTILITIES FLORIDA, INC., AMENDMENT OF AQUA UTILITIES FLORIDA, INC.'S' WATER CERTIFICATE NO 106-W, IN LAKE COUNTY, TO INCLUDE THE HARBOR HILLS UTILITIES, L.P.'S WATER SERVICE TERRITORY, AND CANCELLATION OF HARBOR HILLS UTILITIES, L.P.'S WATER CERTIFICATE No. 522-W.

PETITION FOR FORMAL HEARING

I, Robert V. Nicholson, do hereby object to the applications in the above captioned proceeding and each of them, and request a formal evidentiary hearing on all issues of fact and law in this matter, and allege the following:

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

Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Fl. 32399-0850
Docket No. 110061-WS

2. The name, address, and telephone number of the Petitioner:

Robert V. Nicholson
6201 Topsail Rd.
Lady Lake, Fl. 32159
352-259 2789

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

3. An explanation of how the Petitioner's substantial interests will be affected by the applications:

The petitioner is a customer of Harbor Hills Utility [hereafter "HHU"] and resides in the gated community of Harbor Hills in Lake County, Florida. The substantial interests of the Petitioner will be affected by the Commission's decision in this matter because the proposed applications are not in the public interest, and if approved, would unlawfully and adversely affect the quality, reliability, customer service, rate structure, and cost of potable water and irrigation water, to the Petitioner and the approximately 500 current households in Harbor Hills, plus approximately 95 households in the Grove, plus the future approximately 140 residents of Bella Vista (Phases VI and VII), a part of Harbor Hills, the future residents of approximately 50 vacant lots in Lakeview Village, a part of Harbor Hills, and the future residents of currently unplatted contiguous areas numbering in the, perhaps, hundreds of acres owned by Harbor Hills Development, Ltd.

The wastewater proposal would unlawfully alter a rate structure and contractual and property rights benefiting consumers for the past 23 years.

4. A statement of when and how the Petitioner received notice of the applications:

The petitioner received a copy of the revised notice of the applications by mail on March 11, 2011. Petitioner filed and served timely objections to the applications on July 20, 2011, July 5, 29011, June 22, 2011 and also objected to Aqua's submission of 3/8/2011 on March 28 2011. Said objections are incorporated herein by reference.

5. A concise statement of the ultimate facts alleged, including specific facts that Petitioner contends warrant denial of the applications:

PUBLIC RESPONSES TO THE APPLICATIONS

A In excess of 237 public responses have been filed in this proceeding to date concerning the applications. The facts and matters contained therein are adopted and incorporated herein by reference, and the Commission is requested to take judicial/administrative notice thereof of each of said responses, including, but not limited to, the filings consisting of:

1. Resolution 2011-97 of the Lake County Board of County Commissioners dated July 26, 2011. Reference is made to its many considered objections. This resolution is entitled to be given great weight before this Commission.
2. Letter from Kristen Kollgaard, Town Manager, Town of Lady Lake dated May 17, 2011. Reference is made to the willingness of the Town of Lady Lake to purchase and/or operate the utility operations here involved.
3. Letter from State Senator D. Alan Hays, dated March 24, 2011.
4. Letter from State Representative H. Marlene O'Toole dated March 29, 2011.
5. Letter from Board of Property Owners of Harbor Hills, Inc. dated March 31, 2011.
6. Letter from Ellen Wilcox, President, Property Owners of Harbor Hills, Inc. dated February 14, 2011.

JUDICIAL/ADMINISTRATIVE NOTICE, RES JUDICATA, COLLATERAL
ESTOPPEL, EQUITABLE ESTOPPEL

B. The applicant, Aqua Utilities Florida, Inc., [hereafter "AUF"] is barred from denying the prior findings and conclusions of this Commission that AUF's overall quality of service is marginal and that its attempt to address customer satisfaction is marginal. See Order No. PSC-11-0256-PAA-WS, (issued 6/13/2011), at p. 34 and Order No. PSC-09-0385-FOF-WS (issued 5/29/2009), at p. 21.

CERTAIN ACTIONS PROHIBITED

C. The gated community of Harbor Hills is governed by an ordinance of Lake County referred to as a PUD. It's most recent version is Ordinance #2010-45, recorded at Book 3949/Pages 1649 ff. By its terms, and at all times material, since 1987, its terms and conditions have been covenants running with the land including petitioner's, and a legal contract benefiting land owners including the petitioner, and creating property and contract rights possessed by the residents of Harbor Hills including petitioner within the meaning and protections of the Florida Constitution.

D. The gated community of Harbor Hills is also governed by Declarations and Covenants which at all times material from 1987, and also since being restated in 1995, recorded at Book 1403/Pages 808 ff. and in its prior versions, have been covenants running with the land including petitioner's, and a legal contract benefiting land owners including petitioner. They incorporate the terms and conditions of the PUD and create

property and contract rights possessed by the residents of Harbor Hills including petitioner within the meaning and protections of the Florida Constitution:

Granting this Petition to Aqua will violate these rights

1. By establishing a system of rates for water of whatever quality and source used within Harbor Hills for lawn irrigation which favors in terms of price discrimination one class of residents, users, neighborhoods, or Phase of development within Harbor Hills over another class of residents, users, neighborhoods, or Phase of development within Harbor Hills. Such action, which appears to be contemplated by the applications in this case, will violate petitioner's vested, contract, property, and constitutional rights and said rights belonging to other similarly aggrieved residents of Harbor Hills. It is to be noted as well, that the buyer is required by rule to assume the obligations of the seller. See Rule 25-30.037, 3,

2. Altering the wastewater rate system which is without charge to its users.

Petitioner's letters of July 20, 2011 and April 28, 2011 are incorporated herein by reference thereto.

JUDICIAL/ADMINISTRATIVE NOTICE REQUEST

E Petitioner requests that the Commission take judicial and administrative notice of all consumer complaints about AUF contained in its files and proceedings to date involving the various water and wastewater utilities it operates within the State of Florida.

DEFECTS AND OMISSIONS IN THE APPLICATIONS

F. The current water rate of HHU is \$1.23/1,000 gal.

AUF will ultimately propose that the AUF's currently and future prevailing rates in other communities be applied to Harbor Hills. This is an increase of as much as six times current Harbor Hills rates. Such increases, and the rate structures proposed in the applications, and likely to be proposed in the future and the underlying economic and policy ideas behind them, are without any reasonable justification, are based upon erroneous facts and assumptions, and would result in the unjust enrichment of AUF at the expense of petitioner and other similarly aggrieved residents of Harbor Hills, and are not in the public interest.

G. The contract between AUF and HHU does not state a sale price; it is conditioned on this Commission setting both water rates and wastewater rates. See § 3. The implication of Para. 3 is that the final price will abide new water rates in this or some future proceeding, and is not merely setting waste water rates currently.

H. The contract between the parties does not address the capital and operating costs of future expansion of Harbor Hills. This is not an academic question. The Harbor Hills PUD currently permits 949 lots, and there are currently only approximately 500 homes (not including the Grove) . Phase VI and Phase VII have ST. JOHNS RIVER

WATER MANAGEMENT DISTRICT permits but Phase VI has only 5 or so homes presently built, and Phase VII has not been platted. Additionally the developer owns perhaps one or more hundreds of additional developable acres in addition to Phase VII.

I. There are a variety of rate structures for irrigation water totally ignored. There is no discussion of a rate structure specified for irrigation water to Phases VI and VII, and beyond. There is no discussion of irrigation water to the 14 "Blue Tops" duplex villas which is tapped into the golf course surface water source, and would appear to be outside the ambit of the surface water permit, but which the residents are charged for. There is no discussion of the Harbor Hills Homeowners' Association use of water for irrigating common areas which at a \$1.23/1,000 gallons cost is running about \$25,000 per year and which needs to be considered as one of the large long term impacts should the AUF "capband" water rates be applied to it.

J. The data necessary for calculations concerning ERC's for the commercial users is absent, incomplete and/or erroneous and misleading. Underlying data such as meter locations and volume history, usage growth rates, and water rates paid by the commercial users would appear to be necessary in order to fairly calculate ERC's and the relative distribution of ERC'S among classes of users.

K. Para. 10 of AUF's 3/14/2011 response is incorrect in implying all wastewater customers are residential and omits to mention various commercial entities including the for-profit clubhouse and conference center, the for-profit business offices, the for-profit dining areas, the for-profit golf course, the for-profit swimming area, the for-profit tennis facility, etc.

L. Waste Water Treatment Utility

L_1. Aqua has been unresponsive to Public Service Commission communication requiring additional information. Reference Robert V. Nicholson letter of July 5, 2011, incorporated by reference as part hereof.

L_2. Noncompliance with PUD

Terms and conditions of the Harbor Hills Planned Unit Development (PUD) provide

. . . II Public Facilities:

B. Sewer Facilities:

1. All multifamily, clubhouse, and commercial areas shall be served by a Central Wastewater System.

It is an inherent and intrinsic presumptive that these provisions intended and required the recording of income and expense in books of account as set forth by the Florida Public Service Commission, or other governing body.

Failure of Harbor Hills Utilities LLP to keep such records with respect to the Waste Water Treatment facility is not in compliance with the spirit and intent of the PUD. In the event such records do exist, they have not been provided as part of the rate application, nor otherwise provided in the annual report form PSC/ECR 003-w to the Public Service Commission.

As a consequence, neither the public nor the PSC has full information on which to reach informed conclusions and make informed decisions.

Absent the production of these records, the granting of an initial wastewater certificate should be denied.

L_3. Unjust enrichment:

Reference is made to Robert V. Nicholson letter of July 20, 2011 and March 28, 2011 setting forth the unjust enrichment consequence of granting the original Wastewater Certificate as currently structured, and said letters are incorporated herein by reference thereto.

L_4. Defining a time certain:

This unfair consequence of unjust enrichment can be overcome by calculating the present value of future Wastewater treatment services to Wastewater consumers, recording this as a cost of acquisition of the Utility and recording in juxtaposition thereto a corresponding liability to the subject consumers. Annual charges to the consumers will be paid by constructive receipt, said constructive receipt being an offset to the liability account.

L_5. History of the Wastewater services and “no charge therefor”.

When considering the equities in granting or not granting an original wastewater certificate, the self-serving interests of the Developer and the Utility (owned and operated by the same entity) are relevant thereto.

1. It was to the benefit of the Harbor Hills Country Club, (owned by the same entity as Harbor Hills Utility LLP; *(and the Wastewater facility's largest consumer)* not to charge for these facilities and thereby minimize the Country Club expenses.

2. By minimizing carrying charges (water and sewer) on realty, it enhanced the sale ability of Harbor Hills lots and sale of Developer constructed homes, to the benefit of the Developer.

3. Now that these benefits to the Developer are nonexistent or minimal, the Developer seeks to transfer the Water and Wastewater Utility and reap the benefit of an unjustified original waste water certificate.

Petitioner does not dispute Harbor Hills Utilities LLP right to sell the Utility. Petitioner does oppose and object to transfer of water certificate to AUF and granting of an original Waste Water Certificate to AUF, as proposed.

M. The applications fail to state that the current Declarations of Harbor Hills prohibit the residents from drilling wells; thereby foreclosing the option in Phases I-V consisting of approximately 500 households from a low cost irrigation water option and locking them into high water rates for this function which runs from 20,000 to 50,000 gallons of water per month per home. The Grove is not subject to the Harbor Hills Declarations but their ability to obtain 95 well permits is, of course, speculative.

SINGLE UNIFIED SYSTEM VIOLATED

N. The PUD for Harbor Hills requires a single unified system with equality of service and water rates including irrigation water. The applications appear to provide for different classes of water quality to different neighborhoods for irrigation and also different water rates, thereby imposing the prospect of lawfully unfair, discriminatory, and unconstitutional damage upon petitioner and the 500 households in Phases I-V, and also the Grove.

THE INTERLOCKING CORPORATE RELATIONSHIPS BETWEEN THE COMMERCIAL WATER USERS AND HHU

O. The applications are not totally explicit, or even totally accurate, regarding the identity of all commercial users of water at Harbor Hills. These certainly include Harbor Hills Country Club, Ltd., but may also include one or more of the following presently, or in the future:

Harbor Hills Utilities, Ltd., Harbor Hills Sales, Inc., Harbor Hills Development, Ltd., HHCC, Inc. and Michael Rich Sales and Marketing, Inc.

P. Additional data is necessary regarding present and future commercial water and wastewater usage by quality, source and volume; the accuracy and methodology of ERC calculations; the pace, nature and extent of future Harbor Hills development; and potential amendment of Harbor Hills declarations.

Q. As shown by the 2011 corporate and partnership filings with the Florida Secretary of State HHCC, Inc., a Florida for profit corporation is the general partner of the following three partnerships of Harbor Hills Utilities, Ltd. [HHU], Harbor Hills Development, Ltd, and Harbor Hills Country Club, Ltd.

R. On information and belief Harbor Hills Utilities, Ltd. [HHU], is the owner of the water and wastewater systems and well sites.

S. On information and belief Harbor Hills Country Club, Ltd. owns the clubhouse and conference center, the swimming pool area, the golf course, the tennis facility, and perhaps more.

T. On information and belief, Harbor Hills Development, Ltd owns all of the development land of comprising Harbor Hills and not conveyed to residents, including Phases VI and VII.

U. On information and belief all of the shares of the corporation HHCC, Inc. and the entire partnership interests of the three partnerships are owned by Yale University, or a holding company that is itself wholly owned by Yale University.

V. On information and belief, the majority of board of directors of HHCC, Inc. are employees of the Yale University endowment office.

W On information and belief, Harbor Hills Sales, Inc. is a Florida for profit corporation and its President and another director are employees of the Yale University endowment office. In fact, the most recent, 2011 corporate filing states that the fourth director is the head of the Yale University endowment office, David Swensen.

X. The President of HHCC, Inc. is Michael Rich and serves at the pleasure of its Yale controlled Board of Directors. He and his son, Adam are two of the board members of the developer appointed Board of the Harbor Hills Homeowner's Association, Inc., a Florida nonprofit corporation which enforces the Harbor Hills declarations and covenants. It has a six member Board (presently a 7th member seat is vacant). All of its directors are developer-appointed. Another two of its directors (other than Michael and Adam Rich) are full time employees Harbor Hills Country Club, Ltd, a partnership controlled by HHCC, Inc.

THE PUBLIC POLICY BEST ALTERNATIVE

Y. The applications before the commission are inconsistent with sound public policy as it relates to the future of the HHU water and wastewater systems, and will send a significant part of the aforementioned "additional revenues" out of state to AUF's officers and shareholders and not protect the beauty and viability of Harbor Hills and the urgency of the health of Florida's aquifer.

THE HHU WATER SYSTEM IS FUNDAMENTALLY INCOMPATIBLE
WITH THE AUF WATER SYSTEM AND THE TRANSFER WOULD PLACE
HARBOR HILLS AT GRAVE AND INTOLERABLE ECONOMIC RISK

SUBSTANTIALLY INFERIOR

Z. The applications are substantially inferior to other alternatives available for the future ownership and operation of the Harbor Hills water and wastewater systems.

DISPUTES OF MATERIAL FACTS AND THE LEGAL BURDENS OF
PRODUCTION AND PERSUASION

AA. Each of the foregoing allegations involve disputed issues of material facts.

BB. With respect to each disputed fact and with respect to each applicable legal issue , AUF has the legal burdens of production and persuasion.

AMENDMENT AND SUPPLEMENTATION

CC. Petitioner reserves the right to amend or supplement this section as new facts, if any, come to light.

6. A statement of the specific rules or statutes the Petitioner contends require denial or modification of the applications.

The applications and related matters should be denied pursuant to Commission Rules 25-30.033, 25-30.037; Rule 28-106.201, F.A.C.; Section 367.071, Florida Statutes, Section 367.045, Florida Statutes, and the public interest standard applicable to both applications.

WHEREFORE, for the reasons stated above, the Petitioner requests the Commission to conduct a formal evidentiary hearing pursuant to the provisions of Section 120.57 (1),; and further petitions that such hearing be scheduled at a convenient time within or as close as practical to the Harbor Hills certificated service area in Lady Lake, Florida; and further petitions that all other related matters also be venued in Lady Lake, or in the alternative, that he be permitted to appear by telephone.

Respectfully submitted,

s/ Robert V. Nicholson



Robert V. Nicholson
6201 Topsail Rd.
Lady Lake, FL 32159
352-259 2789

CERTIFICATE OF SERVICE
DOCKET NO. 110019-WS

I HEREBY CERTIFY that this petition was filed with the Florida Public Service Commission, Director, Office of Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, FL 32399-0850 this 12th day of August 2011 by depositing the same to said party at said address in the U.S. mail, postage prepaid, and true and correct copies of the above and foregoing have been furnished by mail to D. Bruce May, Esq., attorney for Aqua Utilities Florida, Inc., 315 South Calhoun St., Tallahassee, FL 32301 and Lisa Bennett, Esq., Office of the General Counsel, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, FL. 32399-0850.

s/ Robert V. Nicholson



Robert V. Nicholson