

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for rate)
increase in Brevard, Charlotte/)
Lee, Citrus, Clay, Duval,)
Highlands, Lake, Marion,)
Martin, Nassau, Orange,)
Osceola, Pasco, Putnam,)
Seminole, Volusia, and)
Washington Counties by SOUTHERN)
STATES UTILITIES, INC.; Collier)
County by MARCO SHORES)
UTILITIES (Deltona); Hernando)
County by SPRING HILL UTILITIES)
(Deltona); and Volusia County)
by DELTONA LAKES UTILITIES)
(Deltona))
_____)

DOCKET NO. 920199-WS
ORDER NO. PSC-92-0638-PCO-WS
ISSUED: 07/10/92

ORDER ESTABLISHING PROCEDURE

On June 17, 1992, Southern States Utilities, Inc., and Deltona Utilities, Inc., (the utility) completed the minimum filing requirements for a general rate increase and that date was established as the official filing date for this proceeding. This matter is currently set for an administrative hearing.

The scope of this proceeding shall be based upon the issues raised by the parties and the staff of the Commission (staff) up to and during the prehearing conference, unless modified by the Commission. The hearing will be conducted according to the provisions of Chapter 120, Florida Statutes, and the rules of this Commission.

Discovery

a. When discovery requests are served and the respondent intends to object to or ask for clarification of the discovery request, the objection or request for clarification shall be made within ten (10) days of service of the discovery request. This procedure is intended to reduce delay time in resolving discovery disputes.

b. The hearing in this docket is presently set for November 6, 7, 9-14, 1992. Unless authorized by the Prehearing Officer for good cause shown, all discovery shall be completed by October 28, 1992 (one week before the hearing). In addition, to facilitate their identification, all interrogatories, requests for admissions,

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and requests for production of documents shall be numbered consecutively. Each set of discovery requests shall be numbered sequentially. The discovery requests will be numbered sequentially within a set and any subsequent discovery requests will continue the sequential numbering system. Unless authorized by the Prehearing Officer for good cause shown, the following shall apply: interrogatories, including all subparts, shall be limited to 1,000 and requests for production of documents, including all subparts, shall be limited to 500.

c. Any information provided pursuant to a discovery request for which proprietary confidential business information status is requested shall be treated by the Commission and the parties as confidential. The information shall be exempt from Section 119.07(1), Florida Statutes, pending a formal ruling on such request by the Commission, or upon the return of the information to the person providing the information. If no determination of confidentiality has been made and the information has not been made a part of the evidentiary record in the proceeding, it shall be returned expeditiously to the person providing the information. If a determination of confidentiality has been made and the information was not entered into the record of the proceeding, it shall be returned to the person providing the information within the time periods set forth in Section 367.156, Florida Statutes.

d. On June 2, 1992, the Office of Public Counsel (OPC) filed a Motion to Permit Additional Interrogatories. On June 10, 1992, the utility filed a Motion For Protective Order Striking Citizens' First, Second and Third Sets of Interrogatories and First and Second Requests For Production of Documents. OPC and the utility filed timely responses to each other's motions.

At a June 25, 1992, meeting between the utility, OPC, and staff, the utility agreed to file all clarification requests and substantive objections to OPC's outstanding discovery by July 1, 1992. The utility also agreed to submit responses for the balance of OPC's discovery by August 7, 1992, if OPC withdrew its discovery requests seeking projected data and pre-1989 data, and by August 12, 1992, if OPC did not so withdraw. Counsel for OPC, in turn, agreed not to file a motion to compel responses to its discovery if the utility abided by this schedule.

Having reviewed the motions, I agree that the above resolution is reasonable. Accordingly, I find that both OPC's Motion to

Permit Additional Interrogatories and the utility's Motion For Protective Order are moot.

Diskette Filings

See Rule 25-22.028(1), Florida Administrative Code, which requires some filings to be made on diskette in certain cases.

Notice and Public Information

The utility shall comply with the requirements of Rule 25-22.0406, Florida Administrative Code.

The notice required by Rule 25-22.0406(5), Florida Administrative Code, shall also include a statement that any customer comments regarding the utility's service or the proposed rate increase should be addressed to the Director, Division of Records and Reporting, Florida Public Service Commission, 101 East Gaines Street, Tallahassee, Florida 32399-0870, and that such comments should identify the docket number assigned to this proceeding.

No less than fourteen days prior to the date of a scheduled service hearing, the utility shall provide written notice of the date, time, location, and purpose of the service hearing to all customers within the counties designated in the "Controlling Dates" section below. The utility need only provide one such notice to customers within counties for which more than one service hearing is designated as long as the notice contains the pertinent information for all service hearings designated for those customers and as long as the notice is provided no less than fourteen days prior to the earliest designated service hearing. Furthermore, no less than fourteen days prior to the evidentiary hearing beginning November 6, 1992, the utility shall provide written notice of the date, time, location, and purpose of said hearing to all customers within the service areas included in the rate request. All of the above notices shall be approved by staff prior to distribution, and the utility shall utilize first class mail for notices sent to customers with out-of-town mailing addresses.

In addition to placing copies of its MFRs at those locations required by Rule 25-22.0406(3)(a), Florida Administrative Code, the utility shall place copies of its MFRs at the main county library

of those counties where the utility operates any system included in the rate request and in which the utility has no business offices.

Prefiled Testimony and Exhibits

Pursuant to Rule 25-22.048, Florida Administrative Code, each party shall prefile, in writing, all testimony that it intends to sponsor. Such testimony shall be typed on 8 1/2 inch x 11 inch transcript-quality paper, double spaced, with 25 numbered lines, on consecutively numbered pages, with left margins sufficient to allow for binding (1.25 inches).

Each exhibit which is intended to support a witness' prefiled testimony shall be attached to that witness' testimony when filed, identified by his or her initials, and consecutively numbered beginning with 1. All other known exhibits shall be marked for identification at the prehearing conference. After an opportunity for opposing parties to object to introduction of the exhibits and to cross-examine the witness sponsoring them, exhibits may be offered into evidence at the hearing. Exhibits accepted into evidence at the hearing shall be numbered sequentially. The pages of each exhibit shall also be numbered sequentially prior to filing with the Commission.

An original and 15 copies of all testimony and exhibits shall be prefiled with the Director, Division of Records and Reporting by the close of business (4:45 p.m.) on the date due. A copy of all prefiled testimony and exhibits shall be served by mail to all other parties and staff no later than the date filed with the Commission. Failure of a party to timely prefile exhibits and testimony from any witness in accordance with the foregoing requirements may bar admission of such exhibits and testimony.

Prehearing Statement

Pursuant to Rule 25-22.038(3), Florida Administrative Code, a prehearing statement shall be required of all parties in this docket. Commission staff will also file a prehearing statement. The original and 15 copies of each prehearing statement shall be prefiled with the Director, Division of Records and Reporting by the close of business (4:45 p.m. on the date due). Filings on diskette pursuant to Rule 25-22.028, Florida Administrative Code, are encouraged. A copy of the prehearing statement shall be served on all to all other parties and staff no later than the date it is

filed with the Commission. Failure of a party to timely file a prehearing statement shall be waiver of any issue not raised by other parties or by the Commission. In addition, such failure shall preclude the party from presenting testimony in support of its position. Such prehearing statements shall set forth the following information in the sequence listed below.

(a) the name and address of all known witnesses that may be called by the party, and the subject matter of their testimony;

(b) a description of all known exhibits that may be used by the party, their contents, whether they may be identified on a composite basis, and the witness sponsoring each;

(c) a statement of basic position in the proceeding;

(d) a statement of each question of fact the party considers at issue, the party's position on each such issue, and which of the party's witnesses will address the issue;

(e) a statement of each question of law the party considers at issue and the party's position on each such issue;

(f) a statement of each policy question the party considers at issue, the party's position on each issue, and which of the party's witnesses will address the issue;

(g) a statement of issues that have been stipulated to by the parties;

(h) a statement of all pending motions or other matters the party seeks action upon; and

(i) a statement as to any requirement set forth in this order that cannot be complied with, and the reasons therefore.

Prehearing Conference

A prehearing conference will be held in this docket at the Fletcher Building, 101 East Gaines Street, Tallahassee, Florida. The conditions of Rule 25-22.038(5)(b), Florida Administrative Code, shall be observed. Any party who fails to attend the prehearing conference, unless excused by the Prehearing Officer, will have waived all issues and positions raised in that party's prehearing statement.

Prehearing Procedure: Waiver of Issues

Any issue not raised by a party prior to the issuance of the prehearing order shall be waived by that party, except for good cause shown. A party seeking to raise a new issue after the issuance of the prehearing order shall demonstrate that: it was unable to identify the issue because of the complexity of the matter; discovery or other prehearing procedures were not adequate to fully develop the issue; due diligence was exercised to obtain facts touching on the issue; information obtained subsequent to the issuance of the prehearing order was not previously available to enable the party to identify the issue; and introduction of the issue could not be to the prejudice or surprise of any party. Specific reference shall be made to the information received, and how it enabled the party to identify the issue.

Unless a matter is not at issue for that party, each party shall diligently endeavor in good faith to take a position on each issue prior to issuance of the prehearing order. When a party is unable to take a position on an issue, it shall bring that fact to the attention of the Prehearing Officer. If the Prehearing Officer finds that the party has acted diligently and in good faith to take a position, and further finds that the party's failure to take a position will not prejudice other parties or confuse the proceeding, the party may maintain "no position at this time" prior to hearing and thereafter identify its position in a post-hearing statement of issues. In the absence of such a finding by the Prehearing Officer, the party shall have waived the entire issue. When an issue and position have been properly identified, any party may adopt that issue and position in its post-hearing statement.

Controlling Dates

The following dates have been established to govern the key activities of this case.

- 1) Utility's direct testimony and exhibits July 22, 1992
- 2) Intervenors' direct testimony and exhibits September 25, 1992
- 3) Staff's direct testimony and exhibits, if any October 2, 1992
- 4) Prehearing statements October 9, 1992
- 5) Rebuttal testimony and exhibits October 16, 1992
- 6) Prehearing conference October 28, 1992
- 7) Discovery complete October 28, 1992
- 8) Service Hearings:
 - Counties designated
 - Orange, Osceola August 5, 1992
 - Clay, Duval, Nassau August 11, 1992
 - Orange, Seminole, Volusia August 14, 1992
 - Citrus, Marion, Putnam August 19, 1992
 - Lake, Marion September 3, 1992
 - Citrus, Hernando, Pasco September 9, 1992
 - Highlands September 23, 1992
 - Washington September 28, 1992
 - Martin September 30, 1992
 - Charlotte, Collier, Lee November 2, 1992
- 9) Hearing at a time and location to be determined November 6, 7, 9-14, 1992
- 10) Briefs December 9, 1992

Use of Confidential Information At Hearing

It is the policy of the Florida Public Service Commission that all Commission hearings be open to the public at all times. The Commission also recognizes its obligation pursuant to Section 367.156, Florida Statutes, to protect proprietary confidential business information from disclosure outside the proceeding. Any party wishing to use any proprietary confidential business information, as that term is defined in Section 367.156, Florida Statutes, shall notify the Prehearing Officer and all parties of record by the time of the Prehearing Conference, or if not known at that time, no later than seven (7) days prior to the beginning of the hearing. The notice shall include a procedure to assure that the confidential nature of the information is preserved as required by statute. Failure of any party to comply with the seven day requirement described above shall be grounds to deny the party the opportunity to present evidence which is proprietary confidential business information.

When confidential information is used in the hearing, parties must have copies for the Commissioners, necessary staff, and the Court Reporter, in envelopes clearly marked with the nature of the contents. Any party wishing to examine the confidential material that is not subject to an order granting confidentiality shall be provided a copy in the same fashion as provided to the Commissioners, subject to execution of any appropriate protective agreement with the owner of the material. Counsel and witnesses are cautioned to avoid verbalizing confidential information in such a way that would compromise the confidential information. Therefore, confidential information should be presented by written exhibit when reasonably possible to do so. At the conclusion of that portion of the hearing that involves confidential information, all copies of confidential exhibits shall be returned to the proffering party. If a confidential exhibit has been admitted into evidence, the copy provided to the Court Reporter shall be retained in the Commission Clerk's confidential files.

Post-Hearing Procedure

Pursuant to Rule 25-22.056(3)(a), Florida Administrative Code, each party is required to file a post-hearing statement of issues and positions. Positions in the post-hearing statement shall be summarized in no more than 50 words per issue. If a party's


position on an issue in the post-hearing statement differs from what appears in the Prehearing Order, the position will be marked with an asterisk; in the absence of such demarcation, the party's position on that issue will be shown in the staff recommendation as it appears in the Prehearing Order. If a party's position on an issue does not differ from what appears in the Prehearing Order, the party may simply incorporate said position into its post-hearing statement by reference.

All post-hearing memoranda, including proposed findings of fact, conclusions of law, recommended orders, and briefs, shall be no more than 125 pages combined and shall be filed simultaneously. Proposed findings of fact and conclusions of law are not required. If proposed findings of fact are submitted, the proposed findings must conform with Rule 25-22.056(2)(a) and (b), Florida Administrative Code. In addition, each proposed finding shall be separately and consecutively numbered and shall be followed by a citation to the record, identifying transcript page and line number or exhibit number and page. Proposed findings shall identify the issue to which they relate and shall be grouped by issue, following the order of issues appearing in the Prehearing Order. Any written statement which is not clearly designated as a proposed finding of fact shall be considered to be legal argument rather than a proposed finding of fact. Arguments in briefs must be identified by issue number.

Based upon the foregoing, it is

ORDERED by Commissioner Betty Easley, as Prehearing Officer, that the provisions of this Order shall govern this proceeding unless modified by the Commission.

By ORDER of Commissioner Betty Easley, as Prehearing Officer, this 10th day of July, 1992.


BETTY EASLEY, Commissioner
and Prehearing Officer

(S E A L)

BE/SFS/CB/MF

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), 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.

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 25-22.038(2), Florida Administrative Code, if issued by a Prehearing Officer; 2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or 3) 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 sewer utility. A motion for reconsideration shall be filed with the Director, Division of Records and Reporting, in the form prescribed by Rule 25-22.060, 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.