

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Investigation into) DOCKET NO. 930945-WS
Florida Public Service) ORDER NO. PSC-94-1040-FOF-WS
Commission jurisdiction over) ISSUED: August 24, 1994
SOUTHERN STATES UTILITIES, INC.)
in Florida.)
_____)

The following Commissioners participated in the disposition of this matter:

J. TERRY DEASON, Chairman
SUSAN F. CLARK
DIANE K. KIESLING

ORDER DENYING MOTION FOR RECONSIDERATION
OF ORDER NO. PSC-94-0686-DS-WS

BY THE COMMISSION:

Southern States Utilities, Inc., (Southern States or the utility) filed a Petition for Declaratory Statement on September 23, 1993, asking whether the Commission has exclusive jurisdiction over its water and wastewater facilities in Hillsborough and Polk Counties pursuant to section 367.171(7), Florida Statutes. Southern States asserted that because of the interrelationship of its facilities and land in Polk, Hillsborough, Pasco, Hernando, and Orange Counties, its Polk and Hillsborough facilities and land are part of a system whose service transverses county boundaries within the meaning of section 367.171(7), Florida Statutes, and are therefore subject to the exclusive jurisdiction of the Commission.

We considered the petition at our March 8, 1994, Agenda Conference and voted to deny it. We concluded that the facts presented were insufficient for us to determine, in a declaratory statement proceeding, the full extent of our jurisdiction over Southern States under section 367.171(7), Florida Statutes. We also decided not to determine the jurisdictional status of the utility on a piecemeal county-by-county basis, but to look at it as a whole. At our May 17, 1994, Agenda Conference, we decided to proceed with an investigation to determine our jurisdiction under section 367.171(7), and clarified that the investigation would encompass Southern States' systems in Hernando County.

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On April 4, 1994, Southern States filed several emergency pleadings, including an Emergency Petition for Determination of Interim Florida Public Service Commission Jurisdiction Over Southern States in Hernando County. In its Emergency Petition, Southern States alleged many of the same facts and circumstances as those supporting its Petition for Declaratory Statement asking the Commission to determine its jurisdiction in Polk and Hillsborough counties. Additionally, however, Southern States argued that Hernando County's March 29, 1994, action revoking Commission jurisdiction would irreparably harm the utility.

Southern States maintained that Hernando County intended to reduce rates which would result in revenue losses that Southern States could not recover. Because of this possibility, Southern States contended that emergency action was required by the Commission to prevent irreparable harm to it. Southern States also contended that regulatory chaos would result because the County was not prepared to regulate utilities. Southern States alleged that Hernando County has no staff and no rules to regulate water and wastewater utilities, regulatory inefficiencies will result, and that customers will be confused. Southern States contended that the resulting regulatory chaos would be detrimental to the public health, safety, and welfare. Southern States further asserted that the Commission has the authority to assert emergency interim jurisdiction pending a final determination of jurisdiction in this docket.

By Order No. PSC-94-0686-DS-WS issued June 6, 1994, we found that Southern States had not established that it would be irreparably harmed by Hernando County's action rescinding Commission jurisdiction, and denied the petition. We stated that pursuant to section 367.171(5), Florida Statutes, the Commission or the court retains jurisdiction over all pending cases and that all other jurisdiction had been transferred to Hernando County by its resolution.

Order No. PSC-94-0686-DS-WS denied the petition for declaratory statement, converted Docket No. 930945-WS to an investigation to determine jurisdiction under section 367.171(7), Florida Statutes, over Southern States Utilities, Inc., and denied Southern States Utilities, Inc.'s Emergency Petition for Determination of Interim Florida Public Service Commission Jurisdiction Over Southern States in Hernando County. On June 21, 1994, Southern States filed a motion to reconsider the part of Order No. PSC-94-0686-DS-WS denying its emergency petition to

determine interim jurisdiction and a request for oral argument. No responses to the motion were filed. On June 29, 1994, Southern States filed a Motion for Leave to File Amended Motion for Reconsideration and the Amended Motion. Hernando County filed a response on July 11, 1994, urging us to deny the utility's motion for reconsideration.

We considered the motions at our August 2, 1994, Agenda Conference. Southern States presented oral argument and Hernando County was permitted to respond. Southern States objected to participation by Hernando County based on Rule 25-22.060(1)(f), F.A.C., which provides that "[a] party who fails to file a written response to a point on reconsideration is precluded from responding to that point during the oral argument." We find that although Hernando County did not timely respond to Southern States' initial motion for reconsideration, Southern States' filing of a motion for leave to amend the earlier motion and an amended motion provided the County with a second opportunity to respond. The County's response to the latter-filed motions was timely and we overruled Southern States' objection.

Southern States asked for leave to amend its motion for reconsideration to include facts about an event that occurred after the timely filing of that motion but before the Commission considered it. Hernando County opposed this motion, however, its pleading addresses the merits of the amended motion for reconsideration and does not address the motion for leave to amend the motion. We find that the filing of an amended motion does not prejudice any party and grant leave to amend.

SOUTHERN STATES' MOTION FOR RECONSIDERATION

Rule 25-22.060, Florida Administrative Code, permits a party who is adversely affected by an order of the Commission to file a motion for reconsideration of that order. The purpose of a motion for reconsideration is to bring to an agency's attention a point of fact or law that was overlooked or that the agency failed to consider when it rendered its order. Diamond Cab Company of Miami v. King, 146 So.2d 889 (Fla. 1962). We conclude that Southern States has not shown that we have overlooked any point of fact or law requiring reconsideration.

In its motion for reconsideration, Southern States argues that we erred as a matter of law in denying its emergency petition for

determination of interim jurisdiction pending a final determination of Commission jurisdiction over Southern States in Hernando County. Southern States contends that we based our denial of the emergency petition on the finding that irreparable harm had not been established and that it is a mistake of law to require Southern States to wait until the irreparable harm has been inflicted. Southern States further argues that irreparable harm will result from Hernando County's failure to provide a mechanism for price index/pass-through applications by utilities, as well as Hernando County's expressed intention to serve the Timber Ridge territory that is currently the subject of a pending docket before the Commission.

In response, Hernando County's primary argument is that we do not have the legal authority to grant the relief requested by Southern States. The County further argues that the irreparable harm asserted by the utility is speculative. Hernando County argues that we have no authority to grant injunctions. Hernando County also argues that the County's lack of any particular rules or regulations is irrelevant. Hernando County does not respond to Southern States' concerns related to its pending price index/pass-through application or its pending amendment application related to the Timber Ridge territory expansion.

Southern States' argument supporting reconsideration is premised on incorrect assumptions about our decision to deny its emergency petition. Those incorrect assumptions are that we agreed with Southern States that a change in its rates by Hernando County, which might result in a revenue loss to the utility, would constitute a threat to the public health, safety, or welfare, and that the Commission has the authority to prevent such an injury by asserting interim jurisdiction in Hernando County.

As we stated in Order No. PSC-94-0686-DS-WS, the Commission's jurisdiction in Hernando County is limited by Section 367.171, Florida Statutes, to pending cases. All other jurisdiction was transferred to the County by operation of law. By stating in the order that irreparable harm had not been established, we did not mean to imply that the issue of our jurisdiction turns on whether such harm is established. We denied emergency relief because we did not agree that anything Southern States alleged created a threat to the public health, safety, or welfare that we had the authority to remedy by asserting "interim jurisdiction."

Section 367.171, Florida Statutes, expressly provides when the Commission has jurisdiction and when the County has jurisdiction. Once a county rescinds jurisdiction, the Commission only has jurisdiction over pending cases and over systems that transverse county boundaries--requiring a determination we intend to make in our investigation. There is no other basis for the Commission to assert jurisdiction in Hernando County. The statute does not authorize the Commission to retain jurisdiction or assert interim jurisdiction pending the County's establishment of regulations or hiring of staff, nor does it place any other condition upon the transfer of jurisdiction.

Southern States argues that its inability to obtain a price index/pass-through increase from the Commission for its Hernando County systems will result in irreparable harm. This is the direct result of the statutory jurisdictional framework created by the Florida Legislature. Because of this framework, we do not have the discretion to evaluate a county's ability to regulate when it chooses to rescind Commission jurisdiction.

As to Southern States' allegations regarding Hernando County's intention to serve the Timber Ridge territory, a portion of which is the subject of a pending docket before the Commission, to our knowledge, Hernando County has not yet acted in an official capacity to contravene the jurisdiction of the Commission. As we stated in Order No. PSC-94-0719-FOF-WS, acknowledging Hernando County's resolution, the Commission retains jurisdiction pursuant to Section 367.171(5), Florida Statutes, in all pending dockets, including Docket No. 930758-WS, which is Southern States' amendment application relating to the Timber Ridge territory.

Based upon the foregoing, it is

ORDERED by the Florida Public Service Commission that Southern States Utilities, Inc.'s Motion for Leave to File Amended Motion for Reconsideration of Order No. PSC-94-0686-DS-WS is granted. It is further

ORDERED by the Florida Public Service Commission that Southern States Utilities, Inc.'s Request for Oral Argument is granted. It is further

ORDERED by the Florida Public Service Commission that Southern States Utilities, Inc.'s Amended Motion for Reconsideration of Order No. PSC-94-0686-DS-WS is denied. It is further

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ORDERED by the Florida Public Service Commission that this docket shall remain open until the conclusion of the investigation.

By ORDER of the Florida Public Service Commission this 24th day of August, 1994.

BLANCA S. BAYÓ, Director
Division of Records and Reporting

by: Kay J. Lynn
Chief, Bureau of Records

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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 the Commission's final action in this matter may request 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 by filing a notice of appeal with the Director, Division of Records and Reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Civil Procedure. The notice of appeal must be in the form specified in Rule 9.900 (a), Florida Rules of Appellate Procedure.