

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Investigation into) DOCKET NO. 930945-WS
Florida Public Service) ORDER NO. PSC-94-1363A-PCO-WS
Commission jurisdiction over) ISSUED: November 21, 1994
SOUTHERN STATES UTILITIES, INC.)
in Florida.)
_____)

ORDER AMENDING ORDER GRANTING MOTION
TO STRIKE TESTIMONY OF HERNANDO COUNTY
WITNESS BUDDY L. HANSEN AND CONFERRING
PARTY STATUS UPON HERNANDO COUNTY

By Order No. PSC-94-1363-PCO-WS, issued November 9, 1994, the Prehearing Officer granted the motion of Southern States Utilities, Inc. (SSU) to strike the testimony of Hernando County witness Buddy L. Hansen, and conferred party status upon Hernando County. Inadvertantly, a preliminary draft of Order No. PSC-94-1363-PCO-WS was issued, which failed to incorporate certain revisions. Order No. PSC-94-1363-PCO-WS is, therefore, amended in its entirety as follows:

On September 12, 1994, Hernando County filed the direct testimony of Buddy L. Hansen. On September 14, 1994, Hernando County filed the corrected testimony of Buddy L. Hansen. On October 5, 1994, SSU filed a motion to strike Mr. Hansen's testimony. On October 17, 1994, Hernando County filed a response to SSU's motion to strike.

In its motion to strike, SSU first argues that Hernando County is not a party to this proceeding, as it has never formally intervened. SSU, therefore, argues that Mr. Hansen's testimony should be stricken so that SSU, Commission Staff, and other parties to this proceeding will not have to expend time and effort unnecessarily.

In its response, Hernando County argues that it is an original party to this proceeding and that it is, therefore, not required to intervene in this proceeding, in which its substantial interests are subject to determination. Hernando County suggests that SSU's argument is as "ludicrous" as suggesting that SSU would have to intervene in a proceeding initiated by the Office of Public Counsel to reduce SSU's rates.

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Hernando County's argument regarding its original party status is not without merit. However, the Prehearing Officer notes that there are thirty counties which may be affected by this proceeding and therefore, according to Hernando County's argument, should be considered as original parties. Apparently, most of these have elected not to participate in this proceeding. By convention, an entity whose substantial interests are or may be affected by a proceeding serves notice of its intent to participate in the proceeding by filing a petition. All of the other counties that have elected to participate in this proceeding have formally intervened. The Office of Public Counsel, which is statutorily empowered to represent utility ratepayers before this Commission, initiates its participation in Commission proceedings by filing a notice of intervention. Even utility ratepayers, who have just as much claim to original party status as Hernando County, routinely initiate their participation through one or another formal mechanism. Not only does a petition to intervene afford an opportunity to demonstrate that one's substantial interests are or may be affected by the proceeding but, if granted, it also provides a convenient vehicle to inform other parties of a person's party status.

Hernando County should have filed a petition to intervene in this proceeding. Nevertheless, it is clear that Hernando County intends to participate as a party in this proceeding. Accordingly, SSU's motion to strike, insofar as it is based upon Hernando County's lack of party status, is denied. In addition, all parties to this proceeding shall henceforth treat Hernando County as a party.

SSU also argues that Mr. Hansen's testimony, which generally concerns uniform rates, should be stricken because it is not relevant to the issue at hand, namely, this Commission's jurisdiction over SSU under Section 367.171(7), Florida Statutes. Hernando County argues that it is premature to strike Mr. Hansen's testimony because the issues for this case have not been finalized.

Upon review of Mr. Hansen's testimony, it is apparent that the majority of his testimony is not relevant to a determination of the Commission's jurisdiction under Section 367.171(7), Florida Statutes. Mr. Hansen's testimony consists mainly of a discussion of statewide uniform rates, particularly the issue of subsidies, which clearly is not relevant to the subject matter of this docket. Most of the remainder of Mr. Hansen's testimony consists of commentary on matters of no legal import in this docket. His limited discussion at pages 13 and 14 of Section 367.171(7), Florida Statutes, is legal argument, which is more appropriately reserved for argument of counsel in a party's brief. See Order No.

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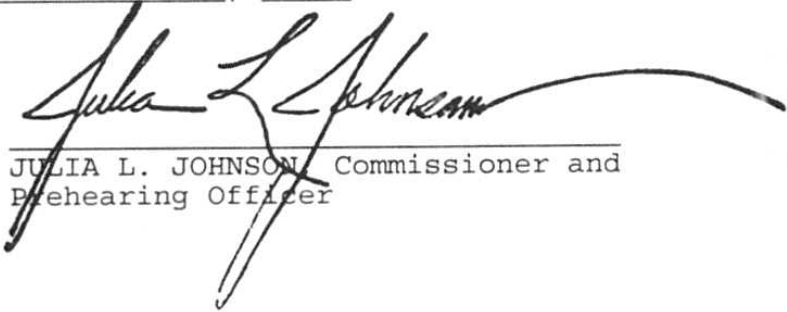
PSC-94-0371-PCO-WS, issued March 30, 1994, In Re: Investigation Into the Appropriate Rate Structure for SOUTHERN STATES UTILITIES, INC. for All Regulated Systems in Bradford, Citrus, Clay, Collier, Duval, Hernando, Highlands, Lake, Lee/Charlotte, Marion, Martin, Nassau, Orange, Osceola, Pasco, Putnam, Seminole, St. Johns, St Lucie, Volusia, and Washington Counties. Accordingly, the remainder of his testimony is stricken.

It is, therefore,

ORDERED by Commissioner Julia J. Johnson, as Prehearing Officer, that Order No. PSC-94-1363-PCO-WS is hereby amended as set forth in the body of this Order. It is further

ORDERED that Order No. PSC-94-1363-PCO-WS is affirmed in all other respects.

By ORDER of Commissioner Julia L. Johnson, as Prehearing Officer, this 21st day of November, 1994.



JULIA L. JOHNSON, Commissioner and
Prehearing Officer

(S E A L)

RJP

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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 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 wastewater 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.