

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application for rate ) DOCKET NO. 950495-WS  
increase and increase in service ) ORDER NO. PSC-96-0347-FOF-WS  
availability charges by Southern ) ISSUED: March 11, 1996  
States Utilities, Inc. for )  
Orange-Osceola Utilities, Inc. )  
in Osceola County, and in )  
Bradford, Brevard, Charlotte, )  
Citrus, Clay, Collier, Duval, )  
Highlands, Lake, Lee, Marion, )  
Martin, Nassau, Orange, Osceola, )  
Pasco, Putnam, Seminole, St. )  
Johns, St. Lucie, Volusia, and )  
Washington Counties. )  
\_\_\_\_\_ )

The following Commissioners participated in the disposition of this matter:

SUSAN F. CLARK, Chairman  
J. TERRY DEASON  
JOE GARCIA  
JULIA L. JOHNSON  
DIANE K. KIESLING

ORDER DENYING SSU'S MOTION FOR RECONSIDERATION  
OF ORDER NO. PSC-95-1504-PCO-WS

BY THE COMMISSION:

On June 28, 1995, Southern States Utilities, Inc. (SSU or utility) filed an application requesting increased water and wastewater rates for 141 services areas, pursuant to Section 367.081, Florida Statutes. SSU also requested an increase in service availability charges, pursuant to Section 367.101, Florida Statutes, an allowance for funds used during construction (AFUDC) and an allowance for funds prudently invested. We acknowledged the intervention of the Office of the Public Counsel (OPC) by Order No. PSC-95-0901-PCO-WS, issued July 26, 1995.

On September 22, 1995, OPC filed two separate motions: Citizens' Fifth Motion to Compel and Fifth Motion to Postpone Date for Filing Intervenor Testimony, and Citizen's Sixth Motion to Compel, Sixth Motion to Postpone Date for Filing Intervenor Testimony, and Motion to Impose Sanctions. On September 29, 1995, SSU filed a separate response to each of OPC's motions and a Second Motion for Protective Order. In its Fifth Motion to Compel, OPC stated that its Request for Production of Document No. 71 required

DOCUMENT NUMBER-DATE

02948 MAR 11 88

FPSC-RECORDS/REPORTING

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SSU to provide a copy of all federal income tax returns and all schedules, workpapers, and consolidating schedules for Minnesota Power and Light (MP&L) for the years 1992 through 1994. OPC alleged that while SSU produced those documents for inspection at the utility's office on September 19 and 20, 1995, the utility refused to allow OPC to copy the documents. OPC contended that Rule 1.350, Florida Rules of Civil Procedure, which the Commission has adopted, allows parties to inspect and copy documents. OPC further contended that SSU's refusal to permit duplication of the documents impeded OPC's preparation in this docket.

In its response, SSU contended that OPC consented to SSU's manner of producing the documents, and had therefore essentially waived any objection. SSU stated that it notified OPC in its September 7, 1995, response that "since these items are confidential, they will be available for review but may not be copied," and that OPC made arrangements to view the documents without objecting to this method of production. SSU argued that this method of production is an accepted practice, one that OPC and SSU have employed in past rate case filings. SSU stated that it was not until OPC representatives were inspecting the documents on September 19, 1995, that OPC first demanded copies of the documents.

In its Second Request for Protective Order, SSU raised arguments regarding the confidentiality of the documents, the relevance of the request, the burden of the request, and that some of the information sought has already been provided in other reports. SSU also contended that standard practice in the industry is to allow inspection but not the copying of tax returns, and that OPC is singling out SSU and MP&L for disparate treatment.

By Order No. PSC-95-1504-PCO-WS, (Order) issued December 5, 1995, the Prehearing Officer, inter alia, granted OPC's Fifth Motion to Compel and denied SSU's Second Motion for Protective Order. The Order held that neither merely informing a party of the intent to produce, but to deny copying, nor prior practice in that regard, will provide protection from copying of material produced under the discovery rules.

The Prehearing Officer also found that SSU's Second Motion for Protective Order failed to allege any compelling reason to deny OPC the opportunity to obtain copies of the consolidated tax returns related to Document Request No. 71. Finding that the confidentiality of the tax returns had been protected by Order No. PSC-95-1286-CFO-WS, issued October 17, 1995, the Order directed SSU

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to produce the consolidated tax returns for copying or provide copies of the documents listed in Exhibit C of SSU's response filed September 29, 1995, within ten days of Order No. PSC-95-1504-PCO-WS.

On December 15, 1995, SSU filed a Motion for Reconsideration of Order No. PSC-95-1504-PCO-WS. SSU also filed a Request for Oral Argument on that date. We granted SSU's request for oral argument and considered the parties' arguments at our February 20, 1996, Agenda Conference.

SSU's motion sought reconsideration of that portion of Order No. PSC-95-1504-PCO-WS which granted OPC's Fifth Motion to Compel. SSU raised three points: the Order was premised on a mistake of law regarding temporary exemptions from Section 119.07(1), Florida Statutes through a motion for temporary protective order filed pursuant to Rule 25-22.006(5)(c), Florida Administrative Code; the Order contains a mistake of law and fact as to the question of OPC's waiver of its right to copy the tax return documents; and the Order contains a mistake of law and fact because it failed to consider SSU's relevancy arguments. In its December 18, 1995, response, OPC stated that it has a right to obtain the documents under applicable discovery rules, and had not yet obtained the documents five months after its original discovery request.

Rule 25-22.038(2), Florida Administrative Code, permits a party who is adversely affected by an order of the Prehearing Officer to seek reconsideration by the prehearing officer or review by the Commission, by filing a motion in support thereof within ten days of service of the order. The judicial standard for reconsideration is set out in Diamond Cab Co. of Miami v. King, 146 So.2d 889 (Fla. 1962). The purpose of a petition for rehearing is merely to bring to the attention of the trial court or the administrative agency some point which it overlooked or failed to consider when it rendered its order in the first instance, and it is not intended as a procedure for re-arguing the whole case merely because the losing party disagrees with the judgment. Id. at 891. The granting of a petition for reconsideration is based on specific factual matters set forth in the record and susceptible to review. Stewart Bonded Warehouse, Inc. v. Bevis, 294 So.2d 315, 317 (Fla. 1974). We have applied these standards in our review of the utility's motion for reconsideration.

SSU's first argument does not properly interpret the Order. The utility contended that the Prehearing Officer ruled that the utility erred when it failed to request protection from OPC's copying of the documents in question at the time that it requested a temporary protective order on September 21, 1995, a time when it

knew copying was at issue. SSU argued that at that time it was merely responding to OPC's First Set of Requests for Production of Documents, and that it was then only permitted to seek a temporary protective order pursuant to the confidentiality provisions of Rule 25-22.006(5)(c), Florida Administrative Code. Accordingly, SSU asserted that the Prehearing Officer premised the denial of protection on a mistaken reading of Rule 25-22.006(5)(c), Florida Administrative Code.

A party may at any time move for a protective order during the course of discovery, and may request that the method of discovery be limited to certain proscribed terms. Rule 1.280(c), Florida Rules of Civil Procedure. The cited portion of the Order refers to the timing of the request, and not that the request be made pursuant to the confidentiality rules. Moreover, the Prehearing Officer expressly considered SSU's subsequent Motion for Protective Order, filed appropriately in response to OPC's Motion to Compel, and found that there was no compelling reason to deny OPC the opportunity to obtain copies of MP&L's tax returns. The Order did not deny SSU the protection because SSU did not file for protection at the time confidentiality was sought.

We also find SSU's second point regarding OPC's waiver to be unpersuasive. SSU argued that OPC waived its right under Rule 1.350, Florida Rules of Civil Procedure, by three times consenting to SSU's condition that OPC would be permitted to inspect, but not copy, the documents in question. The Order does not contain a mistake of fact or law in its finding regarding the waiver argument. The Order found that under the discovery rules, neither informing a party of the conditions of production nor prior practice will provide protection. The Order acknowledged that the Prehearing Officer was aware of the facts regarding OPC's conduct but found those facts to be unpersuasive. Furthermore, SSU's detailed legal arguments regarding waiver in its motion for reconsideration were not contained in its initial response to OPC's motion to compel. Reconsideration is not an opportunity to raise new arguments.

The utility's third assertion concerned the relevance of the materials requested by OPC. SSU alleged that the information in MP&L's consolidated tax return is irrelevant to these proceedings. We find that the Prehearing Officer properly considered SSU's relevancy argument.

We find that there was no mistake of law or fact, nor anything overlooked or not considered, in Order No. PSC-95-1504-PCO-WS. Therefore, we deny SSU's Motion for Reconsideration of the Order. The utility is hereby ordered to make available without condition

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the consolidated tax returns of MP&L which OPC has requested for inspection and copying at SSU's offices in Apopka within five days of the Commission's vote.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Southern States Utilities, Inc.'s Motion for Reconsideration of Order No. PSC-95-1504-PCO-WS is hereby denied. It is further

ORDERED that Southern States Utilities, Inc., shall make the materials at issue available to the Office of Public Counsel as set forth herein.

By ORDER of the Florida Public Service Commission, this 11th day of March, 1996.

BLANCA S. BAYÓ, Director  
Division of Records and Reporting

by: Kay Flynn  
Chief, Bureau of Records

( S E A L )

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NOTICE OF 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 wastewater utility by filing a notice of appeal with the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, 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 Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.