

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

FILED

In re: Application by Southern States Utilities, Inc. for rate increase and increase in service availability charges for Orange-Osceola Utilities, Inc. in Osceola County, and in Bradford, Brevard, Charlotte, Citrus, Clay, Collier, Duval, Hernando, Highlands, Hillsborough, Lake, Lee, Marion, Martin, Nassau, Orange, Osceola, Pasco, Polk, Putnam, Seminole, St. Johns, St. Lucie Volusia and Washington Counties.

Docket No. 950495-WS

Filed: November 22, 1995

SSU'S RESPONSE TO OPC'S MOTION FOR RECONSIDERATION OF ORDER NO. PSC-95-1387-PCO-WS

Southern States Utilities, Inc. ("SSU"), by and through its undersigned counsel, hereby files the following Response to the Motion for Reconsideration of Order No. PSC-95-1387-PCO-WS filed by the Office of Public Counsel ("OPC"), and states as follows:

1. On November 8, 1995, the Prehearing Officer issued Order No. PSC-95-1387-PCO-WS denying OPC's Motion for Appointment of Counsel.

2. OPC's Motion for Reconsideration does not challenge any of the specific findings or legal conclusions reached by the Prehearing Officer in the Order. Instead, OPC requests that the traditional standard for reconsideration be waived and that the full Commission consider its Motion on a de novo basis due to the "uniqueness and importance" of the issue.¹

3. OPC has made no attempt to demonstrate that the Prehearing Officer overlooked a material fact or reached an

¹OPC's Motion for Reconsideration, at par. 4.

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erroneous conclusion of law in rendering the Order. See Diamond Cab Co. of Miami v. King, 146 So.2d 889, 891 (Fla. 1962); Pingree v. Quaintence, 394 So.2d 161, 162 (Fla. 1st DCA 1981). For this reason alone, OPC's Motion for Reconsideration must be denied.

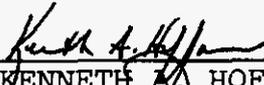
4. The de novo standard for reconsideration suggested by OPC must be rejected. There is no authority for the application of such a standard on a motion for reconsideration. No such authority is cited by OPC in support of its request.

5. Worse, OPC's suggestion that a de novo standard of review is appropriate for unique and important cases flies in the face of the position OPC has taken in Docket No. 920199-WS. In that docket, SSU filed a motion for reconsideration of Order No. PSC-95-1292-FOF-WS. That order requires SSU, inter alia, to provide refunds to certain SSU customers based on the First District Court of Appeal's reversal of the uniform rate structure ordered for SSU by the Commission. The Commission's refund requirement based on the Court's reversal of the Commission imposed rate structure not only has significant adverse financial impacts on SSU but is unprecedented under Florida law. Nonetheless, in its response to SSU's Motion for Reconsideration, OPC insists on the application of the traditional standard for reconsideration, quoting State ex rel. Jaytex Realty Co. v. Green, 105 So.2d 817, 819 (Fla. 1st DCA 1958) (the petitioner must have an honest conviction that the court failed to consider a question of law or fact which would require a

different decision).² The inconsistent position taken by OPC in Docket No. 920199-WS clearly undermines its suggestion in its instant Motion for Reconsideration that a de novo standard is appropriate on reconsideration in this case. OPC's picking and choosing of different standards for reconsideration to suit the position it takes in a particular case strains credibility and, in any event, is without authority.

WHEREFORE, for the foregoing reasons, SSU respectfully requests that OPC's Motion for Reconsideration of Order No. PSC-95-1387-PCO-WS be denied.

Respectfully submitted,


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²See Citizens' Response in Opposition to Southern States' Motion for Reconsideration filed November 15, 1995 in Docket No. 920199-WS, at pg. 2, fn. 1.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing SSU's Response to OPC's Motion for Reconsideration of Order No. PSC-95-1387-PCO-WS was furnished by U. S. Mail to the following on this 22nd day of November, 1995:

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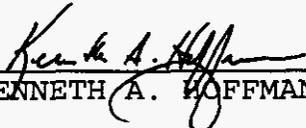
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