

FLORIDA PUBLIC SERVICE COMMISSION
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M E M O R A N D U M

FEBRUARY 19, 1996

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYO)

FROM: DIVISION OF LEGAL SERVICES (CAPELESS) *LAB*
DIVISION OF WATER & WASTEWATER (WILLIS) *W*

RE: DOCKET NO. 950495-WS - APPLICATION FOR RATE INCREASE AND INCREASE IN SERVICE AVAILABILITY CHARGES BY SOUTHERN 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

AGENDA: FEBRUARY 20, 1996 - REGULAR AGENDA - DECISION PRIOR TO HEARING - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: I:\PSC\LEG\WP\SSUREC04.RCM

CASE BACKGROUND

Southern States Utilities, Inc. (SSU or utility) is a Class A utility which provides water and wastewater service to service areas in 25 counties. On June 28, 1995, SSU filed an application with the Commission 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.

On July 26, 1995, the Commission acknowledged the intervention of the Office of the Public Counsel (OPC) by Order No. PSC-95-0901-PCO-WS. The Commission granted intervention to: the Sugarmill Woods Civic Association, Inc., (Sugarmill Woods) and the Spring Hill Civic Association, Inc., (Spring Hill) by Order No. PSC-95-1034-WS, issued August 21, 1995; the Marco Island Civic Association, Inc., (Marco Island) by Order No. PSC-95-1143-WS, issued September 14, 1995; the Concerned Citizens of Lehigh Acres

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by Order No. 96-PSC-0089-PCO-WS, issued January 17, 1996; and the Harbor Woods Civic Association, Inc., by Order No. 96-PSC-0090-WS, also issued January 17, 1996.

On January 31, 1996, the Board of Supervisors of the East County Water Control District (ECWCD), filed a petition for leave to intervene in this proceeding. None of the parties to this docket have filed a response to the petition, and pursuant to Rule 25-22.037, Florida Administrative Code, the response time has run. This recommendation addresses ECWCD's petition for leave to intervene.

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DISCUSSION OF ISSUES

ISSUE 1: Should ECWCD's petition for leave to intervene in this proceeding be granted?

RECOMMENDATION: Yes, ECWCD's petition for leave to intervene should be granted. However, ECWCD's requests that parties be directed to serve ECWCD with all previously filed documents and that all documents be served upon its vice-president, in addition to its counsel of record, should be denied. (CAPELESS)

STAFF ANALYSIS: By petition filed January 31, 1996, ECWCD, by and through its attorney, Michael B. Twomey, Esquire, requests leave to intervene in this proceeding. In support of its petition, ECWCD states that it is a drainage district pursuant to Chapter 298, Florida Statutes, and is a water and wastewater customer of Southern States Utilities, Inc. (SSU), in Lee County, Florida. ECWCD states that because SSU has requested increased water and wastewater rates, ECWCD's substantial interests will be determined by this proceeding, as defined by Section 120.52(12), Florida Statutes, and that it is per se entitled to status as a party in this proceeding.

ECWCD attached to its petition a copy of its resolution dated January 18, 1996, declaring that it intervenes in this proceeding "on behalf of its taxpayers and rate payers of increasing water and sewer charges." The resolution states that SSU provides service within ECWCD's district, that it has a substantial interest in the operation of SSU through its "plans of reclamation" by recharging the aquifer and providing a sewer drainage system, and that the taxes collected by ECWCD should be considered in this proceeding.

In addition to requesting leave to intervene and permission to participate in this proceeding with full rights as a party, ECWCD has also requested that the Order Granting Intervention: 1) direct SSU to immediately serve ECWCD with a full and complete copy of its petition, testimony, and all supporting documentation filed with the Commission, its staff, and other parties; 2) direct Commission staff and other parties to this case to serve upon ECWCD copies of all documents either filed with the Commission or served upon other parties up to, and including, the date of the Order Granting Intervention; and 3) direct the parties to this docket to serve all documents relating to this proceeding on both its counsel and vice-president.

As stated in the case background, none of the parties to this docket have filed a response to ECWCD's petition, and pursuant to

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Rule 25-22.037, Florida Administrative Code, the response time has run.

Staff notes that as a Chapter 298 drainage or water control district, ECWCD's Board of Supervisors has certain specific powers "to effect the drainage, protection, and reclamation of the land in the district subject to tax," as specified in Section 298.22, Florida Statutes. In providing for the organization of drainage or water control districts, the Legislature "conferred certain limited powers on these statutory creatures for the purpose of reclaiming and draining swamps and overflowed lands." Roach v. Loxahatchee Groves Water Control District, 417 So. 2d 814, 816 (Fla. 4th DCA 1982). And "[t]he law is well-settled that drainage districts have only those powers which the Legislature has delegated by statute." Id.

Chapter 298, Florida Statutes, does not delegate to drainage district boards of supervisors the authority to participate as a party in administrative proceedings on behalf of their taxpayers. Nevertheless, pursuant to Subsection 120.52(12)(b), Florida Statutes, any person whose substantial interests will be affected by agency action may participate as a party in Chapter 120 proceedings. Subsection 120.52(13), Florida Statutes, defines "person" to be, in relevant part, any agency described in Subsection 120.52(1), Florida Statutes. And Subsection 120.52(1)(b), Florida Statutes, provides that "agency" means, among other things, Chapter 298 drainage districts.

Based on the foregoing, staff believes that ECWCD should be permitted to participate as a party to this proceeding pursuant to Chapter 120, Florida Statutes. As a water and wastewater customer of SSU, ECWCD's substantial interests may be affected by this proceeding. Therefore, staff recommends that ECWCD's request to intervene should be granted.

However, pursuant to Rule 25-22.039, Florida Administrative Code, ECWCD takes the case as it finds it. For this reason, staff further recommends that ECWCD's request that parties be directed to serve ECWCD with all previously filed documents should be denied. ECWCD may inspect all documents on file at the Division of Records and Reporting and may either make copies or obtain documents through discovery. Moreover, staff recommends that ECWCD's request that all documents be served upon its vice-president, in addition to its counsel of record, should also be denied. Parties should only be required to serve documents on ECWCD's counsel of record.

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ISSUE 2: Should this docket be closed?

RECOMMENDATION: No, this docket should remain open in order to process the utility's application. (CAPELESS)

STAFF ANALYSIS: This docket should remain open in order to process the utility's application.