

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application for rate) DOCKET NO. 950495-WS
increase and increase in service) ORDER NO. PSC-96-0416-FOF-WS
availability charges by Southern) ISSUED: March 26, 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 ON INTERVENTION

BY THE COMMISSION:

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.

On January 31, 1996, by and through its counsel, Michael B. Twomey, Esq., the Board of Supervisors of the East County Water Control District (Board), filed a petition for leave to intervene in this proceeding with full rights as a party, together with a copy of its resolution declaring that the East County Water Control District (District) intervenes in this proceeding on behalf of its taxpayers. This petition was originally scheduled to be ruled upon at the February 20, 1996, agenda conference. However, at that agenda conference, counsel for SSU requested deferral of the item because SSU had not received a copy of the petition or resolution,

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despite that it is named on the certificate of service. In order to give SSU an opportunity to file a response, the Chairman deferred ruling on the petition until the March 5, 1996, agenda conference. On February 27, 1996, SSU filed a response to the petition. No other party to this docket has filed a response, and pursuant to Rule 25-22.037, Florida Administrative Code, the response time has run.

In support of its petition, the Board states that the District is a drainage district within the meaning of Chapter 298, Florida Statutes, and is a water and wastewater customer of SSU in Lee County, Florida. The Board states that because SSU has requested increased water and wastewater rates, the District's substantial interests will be determined by this proceeding, as defined by Section 120.52(12), Florida Statutes, and that the District is per se entitled to status as a party in this proceeding.

In its resolution dated January 18, 1996, the Board declares that the District intervenes in this proceeding against the proposed rates "on behalf of its taxpayers and rate payers of increasing water and sewer charges." The Board also states in the resolution that SSU provides wastewater service to 7%, and water service to 14%, of the District's land; that the District 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 the District should be considered in this proceeding.

In addition, the Board also requests that the Order Granting Intervention: 1) direct SSU to immediately serve the District 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 the District 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 upon the vice-president of the District, as well as upon counsel for the Board.

In its response, SSU states that it does not object to the petition provided the Board's participation in this proceeding is limited to its status and standing as a customer of SSU. However, SSU objects to the participation of the Board in this proceeding as a representative of the taxpayers who reside in the District. SSU states that there is no authority cited in the petition which would support such standing, and that there is nothing in Chapter 298,

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Florida Statutes, which authorizes the District to participate in an administrative proceeding on behalf of its taxpayers. SSU cites to Roach v. Loxahatchee Groves Water Control Dist., 417 So. 2d 814, 816 (Fla. 4th DCA 1982), for the proposition that it is well settled that a Chapter 298 drainage district has "only those powers which the Legislature has delegated by statute." Therefore, SSU argues that the resolution attached to the petition does not confer standing on the Board to represent its taxpayers in this proceeding.

Moreover, SSU notes that it appears from the petition that the taxpayers within the District who are customers of SSU receive service in the Lehigh service area, and that such customers already are represented in this proceeding through the intervention of OPC and the Concerned Citizens of Lehigh Acres.

Further, SSU argues that the Board's request that SSU immediately serve the District with a full and complete copy of its petition, testimony and all supporting documentation filed with the Commission, the Commission staff, and other parties should be denied. According to SSU, intervenors take this proceeding as they find it under Rule 25-22.039, Florida Administrative Code, and the denial of this request would be consistent with prior orders concerning petitions for leave to intervene in this proceeding.

We initially note that the Board apparently uses the terms "Board" and "District" interchangeably in the petition. However, nowhere in the petition does the Board expressly request permission to intervene on behalf of the taxpayers of the District. The petition is therefore unclear as to whether the Board requests leave to intervene as a customer itself, or whether it requests leave to intervene on behalf of the entire District. As noted above, in the resolution, the Board declares that the District intervenes in this proceeding "on behalf of its taxpayers and rate payers of increasing water and sewer charges." As noted by SSU in its response, however, there is no authority cited in the petition to support the standing of the Board to intervene on behalf of the taxpayers in the District.

As a Chapter 298 drainage or water control district, the Board has certain specific powers "to effect the drainage, protection, and reclamation of the land in the [D]istrict 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 Dist., 417 So. 2d at 816. And as noted by SSU in its response to

the petition to intervene, "[t]he law is well-settled that drainage districts have only those powers which the Legislature has delegated by statute." Id. Also as noted by SSU, Chapter 298, Florida Statutes, does not authorize a drainage district board of supervisors to participate as a party in administrative proceedings on behalf of its taxpayers.

Moreover, Chapter 120, Florida Statutes, does not authorize a drainage district board of supervisors to participate as a party in administrative proceedings on behalf of its taxpayers. Section 120(12)(d), Florida Statutes, grants such authority only to certain county representatives "to represent the interests of the consumers of a county, when the proceeding involves the substantial interests of a significant number of residents of the county and the board of county commissioners has, by resolution, authorized the [representation]".

We find it appropriate to grant the Board's petition for leave to intervene to the extent that it requests permission to intervene itself as a customer of SSU. 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. Subsection 120.52(1)(b), Florida Statutes, provides that "agency" means, among other things, Chapter 298 drainage districts. Therefore, the Board is a person within the meaning of Chapter 120, Florida Statutes. And as a water and wastewater customer of SSU, the Board's substantial interests may be affected by this proceeding.

However, for the foregoing reasons, the Board shall not be permitted to intervene on behalf of all of the taxpayers or ratepayers of the District. Nevertheless, to the extent that those taxpayers reside in the Lehigh service area, they are already represented in this proceeding through the intervention of OPC and the Concerned Citizens of Lehigh Acres.

Pursuant to Rule 25-22.039, Florida Administrative Code, the Board takes the case as it finds it. For this reason, we hereby deny the Board's request that parties be directed to serve the District with all previously filed documents. The Board may inspect all documents on file at the Division of Records and Reporting and may either make copies or obtain documents through discovery. We also deny the Board's request that all documents be served upon the vice-president of the District, in addition to the Board's counsel of record. Parties shall only be required to serve documents on the Board's counsel of record.

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Based on the foregoing, it is

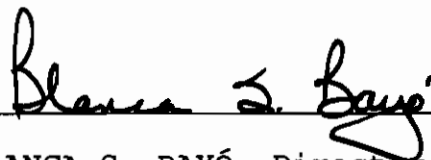
ORDERED by the Florida Public Service Commission that the Petition of the Board of Supervisors of the East County Water Control District for Leave to Intervene is hereby granted in part and denied in part, as set forth in the body of this Order. It is further

ORDERED that all parties to this proceeding shall furnish copies of all testimony, exhibits, pleadings, and other documents that are hereinafter filed in this proceeding to Michael B. Twomey, Esquire, Route 28, Box 1264, Tallahassee, Florida 32310. It is further

ORDERED that the request to require the Commission and parties to serve the Board of Supervisors of the East County Water Control District with all documents filed prior to the date of this Order is hereby denied. It is further

ORDERED that the request of the Board of Supervisors of the East County Water Control District that all documents be served upon its vice-president, in addition to its counsel, is hereby denied.

By ORDER of the Florida Public Service Commission, this 26th day of March, 1996.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

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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.