

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for approval of)	DOCKET NO. 881339-WS
transfer of Certificates 187-W and)	ORDER NO. 22679
131-S in Citrus County from TWIN)	ISSUED: 3-13-90
COUNTY UTILITY COMPANY to SOUTHERN)	
STATES UTILITIES, INC.)	
_____)	

Pursuant to notice, a prehearing conference was held on Thursday, February 15, 1990, before Commissioner Thomas M. Beard, as Prehearing Officer, in Tallahassee, Florida.

APPEARANCES: R.M.C. ROSE and JOHN JENKINS, Esquires, Rose, Sundstrom & Bentley, 2548 Blairstone Pines Drive, Tallahassee, Florida 32301
On behalf of Southern States Utilities, Inc. and Punta Gorda Isles, Inc.

ROBERT J. PIERSON, Esquire, Florida Public Service Commission, 101 East Gaines Street, Tallahassee, Florida 32399-0863
On behalf of the Commission Staff

WILLIAM J. BAKSTRAN, Esquire, Florida Public Service Commission, 101 East Gaines Street, Tallahassee, Florida 32399-0863
Counsel to the Commission

PREHEARING ORDERCase Background

By Order No. 21631, issued August 2, 1989, this Commission approved the transfer of Certificates Nos. 187-W and 131-S from Twin County Utility Company (Twin County) to Southern States Utilities, Inc. (Southern States). In addition, by Order No. 21631, we proposed to deny certain portions of a developer agreement related to the transfer and to require Southern States to file an amended developer agreement.

On August 21, 1989, Southern States and Punta Gorda Isles, Inc. (PGI), on behalf of Twin County, filed a protest to Order No. 21631. Pursuant to their protest, this case is currently set for an administrative hearing on March 14, 1990.

DOCUMENT NUMBER-DATE

02271 MAR 13 1990

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Prefiled Testimony and Exhibits

The testimony of all witnesses has been prefiled. All testimony which has been prefiled in this case will be inserted into the record as though read after the witness has taken the stand and affirmed the correctness of the testimony and associated exhibits. All testimony remains subject to appropriate objections. Each witness will have the opportunity to orally summarize his or her testimony at the time he or she takes the stand. Upon the insertion of a witness' testimony into the record, exhibits appended thereto may be marked for identification. After all parties and Staff have had the opportunity to object and cross-examine regarding any prefiled exhibits, they may be moved into the record. All other exhibits may be similarly identified and entered into the record at the appropriate time during the hearing.

Witnesses are reminded that, on cross-examination, responses to questions calling for a simple yes or no answer shall be so answered first, after which the witness may explain his or her answer.

Order of Witnesses

<u>Witness</u>	<u>Appearing for</u>	<u>Issues</u>
Paula McQueen	PGI	All
Donnie Crandell	Southern States	All

Basic Positions

Southern States: The provisions in the developer agreement disapproved by the Commission are a function of the overall consideration or purchase price for the utility paid by Southern States. No discrimination has taken place because Southern States has either received compensation for any benefit provided to PGI which relates to the three issues in question, or because Southern States is accounting for any under-collection of funds in a manner which places the economic burden of such under-collection on the utility rather than third-party developers or customers. As a result, the

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transaction complies with all statutory and rule requirements and should be approved as submitted including the developer agreement provision.

Staff: Staff's basic position is that Southern States Utilities, Inc. may only charge rates and charges approved by the Commission and that it may not contract away the Commission's authority to prescribe rates and charges that are fair, just and reasonable.

Issues and Positions

1. ISSUE: Is Section 367.101, Florida Statutes, the controlling law regarding the charges for service availability at issue in this docket?

POSITIONS

SOUTHERN STATES: Yes. (Crandell)

PGI: Yes. (McQueen)

STAFF: Yes.

2. ISSUE: Are Rules 25-30.510 through 25-30.585, Florida Administrative Code, the rules applicable to the charges for service availability at issue in this docket?

POSITIONS

SOUTHERN STATES: Yes. (Crandell)

PGI: Yes. (McQueen)

STAFF: Yes.

3. ISSUE: Other than determining rate base for transfer purposes, does the Commission have the authority to establish or adjust purchase price between Buyer and Seller?

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POSITIONS

SOUTHERN STATES: No. (Crandell)

PGI: No. (McQueen)

STAFF: No, unless it involves a violation of Commission rules or the utility's tariff.

4. ISSUE: Should Southern States be allowed to charge any service availability charge other than the approved, tariffed charge?

POSITIONS

SOUTHERN STATES: Southern States should be allowed to collect a service availability charge which does not exceed that set forth in the Company's Tariff. (Crandell)

PGI: Southern States should be allowed to collect a service availability charge which does not exceed that set forth in the Company's Tariff. (McQueen)

STAFF: No.

5. ISSUE: Does the law prohibit Southern States from collecting less than the Commission approved service availability charge?

POSITIONS

SOUTHERN STATES: No. (Crandell)

PGI: No. (McQueen)

STAFF: Southern States may only collect its approved, tariffed service availability charge.

6. ISSUE: Is the agreement by Southern States to collect an amount less than the service availability charge set forth in the utility's tariff a component of the overall purchase price for Twin County?

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POSITIONS

SOUTHERN STATES: Yes. (Crandell)

PGI: Yes. (McQueen)

STAFF: Staff cannot take a position on this issue since it was not a party to the negotiations between Southern States and PGI.

7. ISSUE: If the answer to Issue 6 is yes, is the Commission authorized to deny such a sale provision, thereby altering the purchase price for the utility?

POSITIONS

SOUTHERN STATES: No. (Crandell)

PGI: No. (McQueen)

STAFF: The Commission can always require a utility to charge pursuant to its approved tariff.

8. ISSUE: Should the right to under-collect service availability charges be conditioned upon an accounting treatment which will ensure that the economic burden of such decisions is placed on the utility, not other developers or system customers?

POSITIONS

SOUTHERN STATES: Yes. (Crandell)

PGI: No. (McQueen)

STAFF: If Southern States under-collects for service availability, the economic burden should fall on the utility, not other developers or customers.

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9. ISSUE: Should Southern States be allowed to not collect contributed taxes from PGI if a charge for contributed taxes is approved?

POSITIONS

SOUTHERN STATES: Yes. (Crandell)

PGI: Yes. (McQueen)

STAFF: No, a utility is not only authorized, but required to collect its approved, tariffed charges.

10. ISSUE: Can a utility choose to under-collect or forego collection of gross-up authorized in its tariff?

POSITIONS

SOUTHERN STATES: Yes. (Crandell)

PGI: Yes. (McQueen)

STAFF: No, a utility is not only authorized, but required to collect its approved, tariffed charges.

11. ISSUE: Should Southern States and PGI be allowed to contract away the Commission's authority to establish a charge for treated spray effluent in the event that PGI builds a golf course suitable for the disposal of such treated spray effluent?

POSITIONS

SOUTHERN STATES: No, however, Southern States should be free to contract with PGI to forego collection of a charge subsequently approved by the Commission for effluent disposal services. (Crandell)

PGI: No, however, Southern States should be free to contract with PGI to forego collection of a charge subsequently approved by the Commission for effluent disposal services. (McQueen)

STAFF: No.

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12. ISSUE: Is there a statute, rule or regulation prohibiting Southern States from entering into an agreement to acquire an interest in property for future effluent disposal purposes?

POSITIONS

SOUTHERN STATES: No. (Crandell)

PGI: No. (McQueen)

STAFF: No.

13. ISSUE: Should the provision in Section 13.2 of the developer agreement, regarding disposal of effluent on the golf course that may be constructed by PGI, be approved?

POSITIONS

SOUTHERN STATES: Yes. (Crandell)

PGI: Yes. (McQueen)

STAFF: No, because it contains a provision that there be no charge to the golf course for the receipt of treated spray effluent. This issue should be addressed at the time the golf course is built based upon the circumstances existing at that time.

14. ISSUE: Should the provision in Section 16.2 of the developer agreement, regarding service availability charges, be approved?

POSITIONS

SOUTHERN STATES: Yes. (Crandell)

PGI: Yes. (McQueen)

STAFF: No, the utility should collect the service availability charges contained in its tariff.

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15. ISSUE: Should the provision in Section 22 of the developer agreement, regarding contributed taxes, be approved?

POSITIONS

SOUTHERN STATES: Yes. (Crandell)

PGI: Yes. (McQueen)

STAFF: No, if an income tax gross-up is approved for this system, it should be collected from all customers.

16. ISSUE: Has the Commission waived its right to disapprove provisions in the developer agreement between Southern States and PGI pursuant to the provisions of Rule 25-30.550, Florida Administrative Code, through its failure to give notice of intent to disapprove within thirty days of the date of filing?

POSITIONS

SOUTHERN STATES: Yes. (Crandell)

PGI: Yes. (McQueen)

STAFF: No. The developer agreement was referenced in the asset purchase agreement that was submitted in this docket. Staff requested a copy of the agreement by letter dated January 9, 1989. Therefore, the developer agreement was filed as a response to this letter and not pursuant to Rule 25-30.550, Florida Administrative Code. The utility is in violation of this rule by not filing the developer agreement for approval within thirty days of execution.

Exhibits

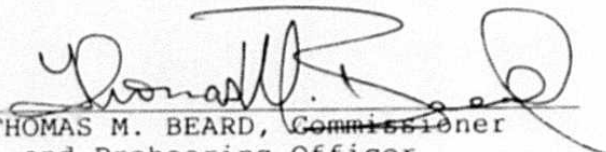
Neither Staff nor the parties have prefiled or identified any exhibits as of the date of the prehearing conference. Staff, however, reserves the right to use exhibits for the purpose of cross-examination. In addition, Staff will request that the Commission take administrative notice of H. Miller & Sons, Inc. v. Hawkins, 373 So.2d 913 (Fla. 1979).

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Based upon the foregoing, it is

ORDERED by Commissioner Thomas M. Beard, as Prehearing Officer, that this Prehearing Order shall govern the conduct of these proceedings unless modified by the Commission.

By ORDER of Commissioner Thomas M. Beard, as Prehearing Officer, this 13th day of MARCH, 1990.


THOMAS M. BEARD, Commissioner
and Prehearing Officer

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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 sewer 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.