

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Investigation Into the ) DOCKET NO. 930880-WS  
Appropriate Rate Structure for ) ORDER NO. PSC-94-0176-FOF-WS  
SOUTHERN STATES UTILITIES, INC. ) ISSUED: February 11, 1994  
for all Regulated Systems in )  
Bradford, Brevard, Citrus, Clay, )  
Collier, Duval, Hernando, )  
Highlands, Lake, Lee/Charlotte, )  
Marion, Martin, Nassau, Orange, )  
Pasco, Putnam, Seminole, St. )  
Johns, St. Lucie, Volusia, and )  
Washington Counties. )  
\_\_\_\_\_ )

The following Commissioners participated in the disposition of this matter:

J. TERRY DEASON, Chairman  
SUSAN F. CLARK  
JULIA L. JOHNSON  
DIANE K. KIESLING  
LUIS J. LAUREDO

ORDER DENYING COUNTIES' MOTION FOR RECONSIDERATION  
OF ORDER NO. PSC-93-1795-PCO-WS  
AND CLARIFYING ISSUE

BY THE COMMISSION:

BACKGROUND

By Order No. PSC-93-0423-FOF-WS, issued March 22, 1993, the Commission approved an increase in Southern States Utilities, Inc.'s (SSU or utility) rates and charges which set rates based on a uniform statewide rate structure. Numerous motions for reconsideration were decided by this Commission at various agenda conferences. On October 8, 1993, Citrus County and Cypress and Oak Villages (COVA) filed a Notice of Appeal of Order No. PSC-93-0423-FOF-WS at the First District Court of Appeal.

At our September 28, 1993, Agenda Conference, this Commission, on our own motion, initiated an investigation to address the question of what rate structure is appropriate for SSU on a prospective basis. In an effort to insure an orderly and efficient discovery process in the investigation, and to insure fairness in the administrative process, the Prehearing Officer, by Order No.

DOCUMENT NUMBER-DATE

01373 FEB 11 1994

FPSC-RECORDS, REPORTING

PSC-93-1582-PCO-WS, issued October 29, 1993, directed Staff and all of the parties to file a list of issues to be considered in this docket. By Order No. PSC-93-1795-PCO-WS, issued December 16, 1993, the Prehearing Officer, after reviewing all of the issues filed, set issues and revised dates for filing testimony and exhibits. The Prehearing Officer rejected those issues deemed to be irrelevant, inappropriate, or incorporated into concepts of other issues.

On December 27, 1993, Citrus and Hernando Counties, hereinafter referred to as "the Counties," timely filed a Motion for Reconsideration of Order No. PSC-93-1795-PCO-WS. On that same date, the Counties filed a Request for Oral Argument. On January 10, 1994, SSU timely filed a Response to the Motion for Reconsideration and Request for Oral Argument. We found it appropriate to grant the Counties' Motion for Oral Argument on this matter. We heard arguments from SSU and the Counties at our Agenda Conference on January 18, 1994.

COUNTIES' MOTION FOR RECONSIDERATION DENIED

In support of the Motion for Reconsideration, the Counties basically assert the following: 1) movants can find nothing in the transcript of the Agenda Conference at which the uniform rate investigation was approved indicating that any individual Commissioner, or the Commission collectively, intended that the investigation would be constrained in any manner by the prior panel decision; 2) in letters to Senator Bankhead dated September 17, 1993, neither the Chairman nor Commissioner Clark indicated any limitation on the ability of the full Commission to review the uniform rate structure; 3) movants believe that in opening the investigation docket, the Commission intended to give all Commissioners the ability to consider the full range of issues affecting the uniform rate structure; 4) the doctrine of administrative finality is misapplied in this case; 5) since some parties (Hernando County) had no participation in the original rate case, they should not be precluded from fully addressing the issues now by the concept of administrative finality; and 6) eliminating an issue because it is factual and can be answered in discovery is not appropriate.

On January 10, 1994, SSU filed a Response to the Motion for Reconsideration, wherein it contends that: 1) the Counties wish to relitigate legal issues previously determined by the Commission in Docket No. 920199-WS; 2) relitigation of these issues at this time is a waste of time and money since these very issues are pending appeal; 3) the Counties' actions are contrary to their previously expressed desire to minimize costs to the utility's customer base;

and 4) the First District Court of Appeal is the ultimate arbiter of whether uniform rates are legal and constitutional.

The first category of issues that the Counties argue should have been included in this proceeding by the Prehearing Officer are the legal issues as to the Commission's authority pursuant to Chapter 367, Florida Statutes, to set uniform rates for Southern States Utilities, Inc. Each of the issues raised presents the question of the legality of uniform rates in light of one or another particular factor, such as the level of contributions-in-aid-of-construction or the cost of treatment.

The Commission has pronounced in Order No. PSC-93-0423-FOF-WS, in Docket No. 920199-WS, that it has the legal authority pursuant to Chapter 367, Florida Statutes, to set uniform rates for SSU based on the factual particulars in the record in that Docket. That Order is now on appeal before the First District Court of Appeal. Any parties to Docket No. 920199-WS who participate in the appeal have the opportunity to raise their concerns regarding the legality of the Commission's establishment of uniform rates in that forum. We believe that it is appropriate now for the Court to make the determination whether the Commission has the legal authority pursuant to Chapter 367, Florida Statutes, to set uniform rates for SSU, if this issue is raised on appeal by any of the parties.

The second category of issues that the Counties argue should have been included by the Prehearing Officer are numerous issues related to discovery. The Counties assert that these are "factual issues" that must be considered in this proceeding. The Prehearing Officer's decision not to characterize these numerous questions of fact as issues does not indicate a judgment that these factual matters have no place in this proceeding. It merely represents the Prehearing Officer's judgment that the actual "issues" of this proceeding can be better captured by the wording set forth in her Order. These factual matters are properly addressed by the Counties in their positions, testimony and exhibits related to the issues that have been established. The issues established by the Prehearing Officer are quite broad and permit exploration of any relevant matters. For example, the numerous components of Issue 2 represent the topics that the Commission should consider in deciding what is the appropriate rate structure for SSU. All of the factual issues that the parties wish to explore, which have not been determined to be irrelevant, may be addressed under one of these various components.

The third and final category of issues proposed by the Counties that the Prehearing Officer has rejected are those that she has determined are not relevant to this proceeding. We find it

important that issues irrelevant to our determination of the appropriate rate structure for SSU be removed at this point in this proceeding because allowing such issues to remain may create an unfair and inaccurate reliance on those issues for some parties, as well as being an inefficient use of resources. Based on our review, it appears that the Prehearing Officer has carefully considered each issue proposed by the parties and has determined that certain issues simply are not "relevant" in a legal sense to the subject matter of this proceeding. In other words, while those issues may raise interesting points, they are not pertinent to the determination of an appropriate rate structure. For example, the Counties' general issue 10 asks how the Commission's workload will be affected as a result of uniform rates, whether uniform rates will reduce that workload, and whether regulatory assessment fees will be reduced accordingly. We will not make a determination regarding the appropriateness of any particular rate structure based on its effect on this Commission's workload or receipt of regulatory assessment fees. Therefore, the Prehearing Officer appropriately rejected this issue as irrelevant.

The standard for determining whether reconsideration is appropriate is set forth in Diamond Cab Company of Miami v. King, 146 So. 2d 89 (Fla. 1962). In Diamond Cab, the Court held that the purpose for a petition for reconsideration is to bring to the attention of the Commission some point which it overlooked or failed to consider when it rendered its decision in the first instance, such as a mistake of law or fact and it is not intended as a procedure for rearguing the whole case merely because the losing party disagrees with the judgment. In Stewart Bonded Warehouses v. Bevis, 294 So. 2d 315 (Fla. 1974), the Court held that a petition for reconsideration should be based upon specific factual matters set forth in the record and susceptible to review.

We find that the Counties have not met the standard in Diamond Cab; specifically, they have not demonstrated that the Prehearing Officer overlooked or failed to consider any specific point in establishing the issues in the Order. Instead, the Counties are merely rearguing the necessity of having each issue raised by them become part of the case.

In conclusion, we find it appropriate to uphold the Prehearing Officer's determination of the appropriate issues for this proceeding and to deny the Counties' Motion for Reconsideration.

#### CLARIFICATION OF ISSUE

We initiated this investigation for the purpose of determining the appropriate rate structure for Southern States Utilities, Inc.

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on a going-forward basis. We did not initiate this investigation to establish rates for this utility. The only rate change that might possibly occur as a result of this proceeding would be the return of the rates of the customers of Southern States Utilities, Inc., who were involved in Docket No. 920199-WS, to the stand alone rates calculated in that proceeding. Order No. PSC-93-1795-PCO-WS established as the fourth issue of this proceeding the following:

"What are the appropriate rates on a going-forward basis?"

Because we will not actually be determining rates in this proceeding, we find it appropriate to clarify that the fourth issue identified by the Prehearing Officer should be worded as follows:

"What is the appropriate rate structure and how should it be implemented?"

Based on the foregoing, it is, therefore,

ORDERED by the Florida Public Service Commission that the Motion for Reconsideration of Order No. 93-1795-PCO-WS filed by Citrus and Hernando Counties is hereby denied. It is further

ORDERED that the fourth issue established in Order No. PCO-93-1795-PCO-WS is clarified as set forth in the body of this Order.

By ORDER of the Florida Public Service Commission, this 11th day of February, 1994.

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STEVE TRIBBLE, Director  
Division of Records and Reporting

( S E A L )

SFS

by: Kay Flynn  
Chief, Bureau of Records

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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 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.