

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Investigation into) DOCKET NO. 930945-WS
Florida Public Service) ORDER NO. PSC-94-1314-PCO-WS
Commission jurisdiction over) ISSUED: October 25, 1994
SOUTHERN STATES UTILITIES, INC.)
in Florida.)
_____)

ORDER DENYING SOUTHERN STATES UTILITIES, INC.'S
MOTION TO STRIKE TESTIMONY OF HILLSBOROUGH
COUNTY WITNESS MICHAEL W. McWEENY, P.E.

By Order No. PSC-94-0686-DS-WS, issued June 6, 1994, this Commission denied a petition by Southern States Utilities, Inc. (SSU) for a declaratory statement regarding our jurisdiction over its operations in the nonjurisdictional counties of Polk and Hillsborough under Section 367.171 (7)¹, Florida Statutes. However, by Order No. PSC-94-0686-DS-WS, we also initiated an investigation to consider the matter of our jurisdiction over SSU's operations in nonjurisdictional counties throughout the state.

By petition filed September 2, 1994, Hillsborough County requested to intervene in this docket. Its petition was granted by Order No. PSC-94-1133-PCO-WS, issued September 15, 1994.

On September 12, 1994, Hillsborough County filed the testimony of Michael W. McWeeny, P.E., Director of the Public Utilities Department of Hillsborough County. On September 26, 1994, SSU filed a Motion to Strike the Testimony of Hillsborough County Witness Michael W. McWeeny, P.E. A copy of its motion was served upon Hillsborough County, by U.S. Mail, on September 23, 1994.

On October 10, 1994, Hillsborough County filed a response to SSU's motion to strike. Under Rule 25-22.037(2)(b), Florida Administrative Code, parties to a proceeding may file written memoranda in response to a motion within seven days of service of the motion. Under Rule 25-22.028(4), Florida Administrative Code,

¹The statute provides that
Notwithstanding anything in this section to the contrary, the commission shall have exclusive jurisdiction over all utility systems whose service transverses county boundaries, whether the counties involved are jurisdictional or nonjurisdictional, except for utility systems that are subject to, and remain subject to, interlocal utility agreements

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when service is perfected by mail, five days are added to the above-prescribed time. Accordingly, Hillsborough County's response was due no later than by October 5, 1994. It is, therefore, untimely, and shall not be considered.

In its motion to strike, SSU argues that Mr. McWeeny's testimony concerns Hillsborough County's regulatory apparatus, its goal of eliminating franchises, the efficacy of County regulation, and the County's interest in its growth management plans. SSU contends that these subjects are not relevant to any of the issues set forth in Order No. PSC-94-0814-PCO-WS, by which this Prehearing Officer established procedures to be followed in this proceeding, or any other issue conceivably relevant to the jurisdictional issues in this proceeding.

The purpose of this docket, which is an investigatory docket, is to consider whether SSU's operations in nonjurisdictional counties are sufficiently functionally related to jurisdictional operations that they comprise a system whose service transverses county boundaries. Mr. McWeeny's testimony, insofar as it addresses broad public policy concerns, may be relevant to this investigation.

Next, SSU relies upon this Commission's statement in Order No. 22459, issued in Docket No. 891190-WS, Petition of General Development Utilities, Inc., that other options to control growth are available to local governments, such as zoning or permitting, and that the Commission's jurisdiction was exclusive over a multi-county system, absent an interlocal agreement. Although this docket may contemplate issues similar to those involved in that case, the particular circumstances are not necessarily identical. Order No. 22459 is, therefore, not necessarily dispositive.

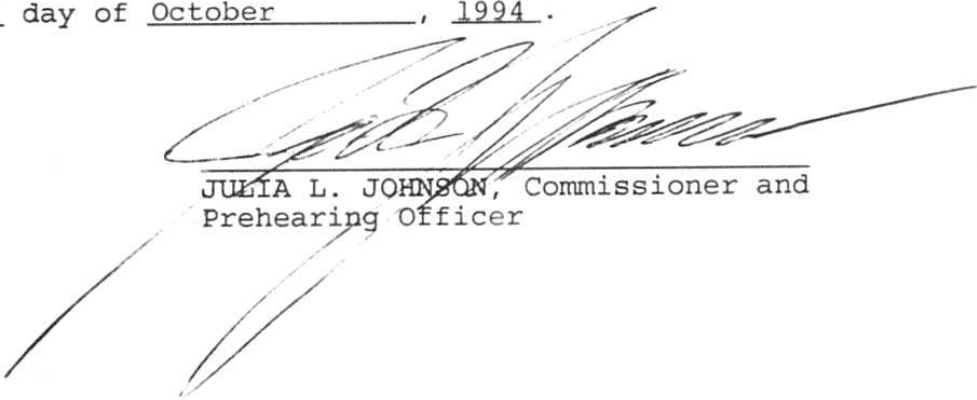
Finally, SSU asserts that Mr. McWeeny's stated purpose in offering his testimony, to demonstrate to the Commission that it is not in the best interests of SSU's Hillsborough County customers to transfer jurisdiction to the Commission, is at odds with Section 367.171 (7), Florida Statutes, providing for one regulatory authority over a utility whose service transverses county boundaries. Mr. McWeeny's testimony, in large part, appears to address the overarching concern of duplicative, inconsistent economic regulation, which may result in discriminatory treatment of similarly situated consumers. Again, such testimony may be helpful to the Commission's deliberations. SSU's motion to strike is, accordingly, denied.

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Based on the foregoing, it is, therefore,

ORDERED by Commissioner Julia J. Johnson, as Prehearing Officer, that Southern States Utilities, Inc.'s Motion to Strike the Testimony of Hillsborough County Witness Michael W. McWeeny, P.E. is hereby denied.

By ORDER of Commissioner Julia L. Johnson, as Prehearing Officer, this 25th day of October, 1994.



JULIA L. JOHNSON, Commissioner and
Prehearing Officer

(S E A L)

CJP/RJP

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.