

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application for) DOCKET NO. 931122-WU
amendment of Certificate No.) ORDER NO. PSC-94-1332-PHO-WU
189-W to include facilities of) ISSUED: October 27, 1994
LAKESIDE GOLF, INC., and for)
limited proceedings to set rates)
in Citrus County by SOUTHERN)
STATES UTILITIES, INC.)
_____)

Pursuant to Notice, a Prehearing Conference was held on October 24, 1994, in Tallahassee, Florida, before Commissioner Diane K. Kiesling, as Prehearing Officer.

APPEARANCES:

MATTHEW FEIL, Esquire, Southern States Utilities, Inc.,
1000 Color Place, Apopka, Florida 32703
On behalf of Southern States Utilities, Inc.

JACK SHREVE, Public Counsel, and HAROLD MCLEAN, Associate
Public Counsel, Office of the Public Counsel, c/o The
Florida Legislature, 111 West Madison Street, Room 812,
Tallahassee, Florida 32399-1400
On behalf of the Citizens of The State of Florida.

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

PRENTICE P. PRUITT, Esquire, Florida Public Service
Commission, 101 E. Gaines Street, Tallahassee, Florida
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Counsel to the Commissioners.

PREHEARING ORDER

I. CASE BACKGROUND

On November 19, 1993, Southern States Utilities, Inc. (SSU or utility) filed an application for transfer of the utility facilities of Lakeside Golf, Inc. (LGI) and for a limited proceeding to set rates in Citrus County. On December 15, 1993, a number of individuals served by LGI objected to SSU's application. Accordingly, this case was set for an administrative hearing. On

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

July 5, 1994, the Office of Public Counsel served notice of its intervention in this proceeding. Its intervention was acknowledged by the Commission by Order No. PSC-94-1006-PCO-WU, issued August 18, 1994. The hearing is currently scheduled for October 31, 1994.

II. PROCEDURE FOR HANDLING CONFIDENTIAL INFORMATION

A. Any information provided pursuant to a discovery request for which proprietary confidential business information status is requested shall be treated by the Commission and the parties as confidential. The information shall be exempt from Section 119.07(1), Florida Statutes, pending a formal ruling on such request by the Commission, or upon the return of the information to the person providing the information. If no determination of confidentiality has been made and the information has not been used in the proceeding, it shall be returned expeditiously to the person providing the information. If a determination of confidentiality has been made and the information was not entered into the record of the proceeding, it shall be returned to the person providing the information within the time periods set forth in Section 367.156, Florida Statutes.

B. It is the policy of the Florida Public Service Commission that all Commission hearings be open to the public at all times. The Commission also recognizes its obligation pursuant to Section 367.156, Florida Statutes, to protect proprietary confidential business information from disclosure outside the proceeding.

In the event it becomes necessary to use confidential information during the hearing, the following procedures will be observed:

- 1) Any party wishing to use any proprietary confidential business information, as that term is defined in Section 367.156, Florida Statutes, shall notify the Prehearing Officer and all parties of record by the time of the Prehearing Conference, or if not known at that time, no later than seven (7) days prior to the beginning of the hearing. The notice shall include a procedure to assure that the confidential nature of the information is preserved as required by statute.
- 2) Failure of any party to comply with 1) above shall be grounds to deny the party the opportunity to present evidence which is proprietary confidential business information.

- 3) When confidential information is used in the hearing, parties must have copies for the Commissioners, necessary staff, and the Court Reporter, in envelopes clearly marked with the nature of the contents. Any party wishing to examine the confidential material that is not subject to an order granting confidentiality shall be provided a copy in the same fashion as provided to the Commissioners, subject to execution of any appropriate protective agreement with the owner of the material.
- 4) Counsel and witnesses are cautioned to avoid verbalizing confidential information in such a way that would compromise the confidential information. Therefore, confidential information should be presented by written exhibit when reasonably possible to do so.
- 5) At the conclusion of that portion of the hearing that involves confidential information, all copies of confidential exhibits shall be returned to the proffering party. If a confidential exhibit has been admitted into evidence, the copy provided to the Court Reporter shall be retained in the Commission Clerk's confidential files.

III. POST-HEARING PROCEDURE

Rule 25-22.056(3), Florida Administrative Code, requires each party to file a post-hearing statement of issues and positions. You must include in that statement, a summary of each position of no more than 50 words, set off with asterisks. If a party's position has not changed since the issuance of the prehearing order, the post-hearing statement may simply restate the prehearing position; however, if the prehearing position is longer than 50 words, it must be reduced to no more than 50 words. The rule also provides that if a party fails to file a post-hearing statement in conformance with the rule, that party shall have waived all issues and may be dismissed from the proceeding.

A party's proposed findings of fact and conclusions of law, if any, statement of issues and positions, and brief, shall together total no more than 60 pages, and shall be filed at the same time. The prehearing officer may modify the page limit for good cause shown. Please see Rule 25-22.056, Florida Administrative Code, for other requirements pertaining to post-hearing filings.

IV. PREFILED TESTIMONY AND EXHIBITS

Testimony of all witnesses to be sponsored by the parties and Staff 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 insertion of a witness' testimony, exhibits appended thereto may be marked for identification. After all parties and Staff have had the opportunity to object and cross-examine, the exhibit 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.

V. ORDER OF WITNESSES

<u>Witness</u>	<u>Appearing For</u>	<u>Issues Nos.</u>
<u>Direct</u>		
Elsie V. Crippen	Utility	3, 6
Morris A. Bencini	Utility	3, 4, 5, 6
Rafael A. Terrero	Utility	5, 6
Forrest L. Ludsen	Utility	1, 2, 3, 5, 6, 7
George B. Radford	Self	
Charles Sweat	OPC (adverse)	All
Kimberly H. Dismukes	OPC	2, 3, 6
Ian J. Forbes	Staff	3, 4
<u>Rebuttal</u>		
Morris A. Bencini	Utility	4, 5, 6, 7

<u>Witness</u>	<u>Appearing For</u>	<u>Issues Nos.</u>
Raphael A. Terrero	Utility	5, 6
Forrest L. Ludsen	Utility	1, 2, 3, 5, 6, 7

VI. BASIC POSITIONS

UTILITY: The transfer of LGI's water facilities to SSU is in the public interest and should be approved. The rate base and rates, charges, rules, policies, etc. requested in the application should also be approved.

OPC: A negative acquisition adjustment is required in this case because SSU is to invest less money in the LGI system than its alleged book value at the time of transfer. Florida Statutes provide a utility such as SSU the opportunity to earn a fair return only upon its investment in property used and useful in the provision of utility service to the public. If a greater investment than SSU's actual investment is utilized, SSU would be provided a return on investment it did not make, and through depreciation, SSU will be provided a return of investment it did not make. Similarly, were SSU given credit for an investment greater than it actually made, SSU would be permitted to earn an excessive rate of return on the investment it actually made.

The Commission has no authority to provide a rate of return upon investment in excess of the investment actually made by a utility owner. SSU is to venture \$119,625 of capital in this case for which it is receiving assets presently used in providing utility service and for which it is receiving assets not presently used in providing utility service. Its investment in property used and useful in the provision of utility service is to be substantially less than \$119,625; yet its application seeks approval of a \$304,521 investment and seeks assurance that it will be permitted to earn a return on investment substantially greater than \$119,625, and further seeks assurance that it will be permitted a return of investment substantially greater than \$119,625.

SSU is to venture \$119,625 in capital for which it is to receive assets. It is legally entitled to the opportunity to earn a return only upon that portion of

the \$119,625 for which it received assets presently used in provision of utility service to the public.

RADFORD: Agree with OPC.

STAFF: The information reviewed to this point indicates that the transfer of the LGI utility assets to SSU should be approved. However, the rate and rate base ramifications of the transfer cannot be ascertained until the evidence has been reviewed and analyzed.

VII. ISSUES AND POSITIONS

Note: Staff's positions are preliminary and based on materials filed by the parties and on discovery. The preliminary positions are offered to assist the parties in preparing for the hearing. Staff's final positions will be based upon all the evidence in the record and may differ from the preliminary positions.

ISSUE 1: Should the transfer of the utility assets of LGI to SSU be approved?

POSITIONS

UTILITY: Yes, the transfer is in the public interest. (Ludsen)

OPC: No, it should not be approved as requested.

RADFORD: Agree with OPC.

STAFF: Yes.

ISSUE 2: Should the Commission recognize a negative acquisition adjustment in establishing the net book value for purposes of the transfer?

POSITIONS

UTILITY: No. (Ludsen)

OPC: Yes. A negative acquisition adjustment of \$184,896 should be included in the determination of rate base. (Dismukes)

RADFORD: Agree with OPC.

STAFF: No.

ISSUE 3: What is the appropriate amount of plant in service to include in rate base?

POSITIONS

UTILITY: The appropriate amount of plant in service is \$340,641, the amount included in the application attached to the prefiled testimony of Mr. Ludsen as Exhibit No. FLL-2. (Crippen, Bencini, Ludsen)

OPC: Plant in service should be reduced by \$47,596 for the following adjustments: \$35,418 associated with the Phase I plant, for which SSU has no original cost documentation; \$8,925 associated with meters, for which SSU has no original cost documentation; \$11,578 associated with the well for Phase II, and; \$3,253 associated with Atlantic Irrigation. (Dismukes)

RADFORD: Agree with OPC.

STAFF: The appropriate amount of plant in service is \$340,641. (Forbes)

ISSUE 4: What is the appropriate amount of contributions in aid of construction (CIAC) and accumulated amortization of CIAC to include in rate base?

POSITIONS

UTILITY: The appropriate amount of CIAC is \$9,050, and the appropriate amount of accumulated amortization of CIAC is \$1,656, as reflected in the application attached to the prefiled testimony of Mr. Ludsen as Exhibit No. FLL-2. (Bencini)

OPC: CIAC should be reduced by \$9,050 and accumulated amortization of CIAC should be reduced by \$1,656, if the Commission adopts intervenors' recommendation to reduce meters by \$8,925 and Phase I plant in service by \$35,418.

If the Commission does not adopt the above-stated position, then CIAC should be increased by \$35,418 for Phase I plant in service and \$17,500 for utility hook-up charges. Accumulated amortization of CIAC should be increased consistent with CIAC.

RADFORD: Agree with OPC.

STAFF: The appropriate amount of CIAC is \$9,050, and the appropriate amount of accumulated amortization of CIAC is \$1,656. (Forbes)

ISSUE 5: What is the appropriate amount of land to include in rate base?

POSITIONS

UTILITY: The appropriate balance of land is \$3,168, the amount reflected in the application attached to the testimony of Mr. Ludsen as Exhibit No. FLL-2. No land should be classified as plant held for future use. (Bencini, Ludsen, Terrero)

OPC: \$387. The balance of the land requested by SSU should be classified as plant held for future use.

RADFORD: Agree with OPC.

STAFF: No position at this time.

ISSUE 6: What is the appropriate rate base for purposes of the transfer?

POSITIONS

UTILITY: As stated in the application, \$304,521. (Crippen, Bencini, Terrero, Ludsen)

OPC: The rate base should be set at the purchase price. (Dismukes)

RADFORD: Agree with OPC.

STAFF: The final amount is subject to the resolution of other issues.

ISSUE 7: What are the appropriate rates, charges, classifications, rules, and service availability policy for the LGI service area?

POSITIONS

UTILITY: For the reasons set forth in Mr. Ludsen's prefiled testimony, the appropriate rates are SSU's uniform rates in effect at the time of the Commission's vote on this matter. All other tariff provisions should be approved as submitted with the application. The rates and charges should be effective in accordance with Rule 25-30.475, Florida Administrative Code. All other tariff provisions should be effective upon approval of the tariff sheets. (Ludsen)

OPC: No position at this time.

RADFORD: Agree with OPC.

STAFF: SSU's uniform rates and charges.

VIII. EXHIBIT LIST

<u>Witness</u>	<u>On Behalf Of</u>	<u>I.D. No.</u>	<u>Description</u>
<u>Direct</u>			
Ludsen	Utility	FLL-1	Statewide Water Rate Survey
Ludsen	Utility	FLL-2	Revised Application for Transfer and Limited Proceeding
Ludsen	Utility	FLL-3	Examples of Bulk Purchase Savings
Ludsen	Utility	FLL-4	Article - Water and Sewer Rates - the Emerging Crisis for the Poor
Forbes	Staff	IJF-1	Audit report
Forbes	Staff	IJF-2	Audit workpapers

<u>Witness</u>	<u>On Behalf Of</u>	<u>I.D. No.</u>	<u>Description</u>
<u>Rebuttal</u>			
Ludsen	Utility	FLL-5	FPSC Order No. 25729, issued 2-17-92 in Docket No. 891309-WS
Ludsen	Utility	FLL-6	State of New York Public Service Commission Order Instituting Proceeding and Statement of Policy on Acquisition of Small Water Companies in Case 93-W-0962
Ludsen	Utility	FLL-7	Article - PUC Role in Assuring Viable Water Service in Small Communities

Parties and Staff may identify additional exhibits for the purpose of cross-examination.

IX. STIPULATIONS

The parties stipulated that LGI's books are not maintained in accordance with the Uniform System of Accounts, as required by Rule 25-30.110(1), Florida Administrative Code.

X. PENDING MOTIONS

OPC'S MOTION TO COMPEL AND FOR CONTINUANCE

On October 3, 1994, OPC filed a motion to compel and for a continuance. In its motion, OPC argues that, on August 15, 1994, it served its first set of interrogatories upon LGI and that, as of the date of its motion, LGI had not responded. Accordingly, OPC requested that an order be issued to compel LGI to respond. OPC further argued that LGI's failure to respond in a timely fashion materially undermined its ability to effectively participate in the administrative process. OPC, therefore, requested that this proceeding be continued.

At the prehearing conference, OPC acknowledged that it received LGI's responses to the interrogatories on October 5, 1994. Its motion to compel is, therefore, moot.

On October 12, 1994, SSU filed a response to OPC's motion to compel and for a continuance. With regard to the motion for continuance, SSU argued that this case has been pending for quite some time, that OPC did not intervene until late in the process, and that it did not avail itself of discovery until the very end of the discovery period. SSU also argued that OPC should not be allowed to manipulate the administrative process by delaying discovery and then asking for a continuance.

At the prehearing conference, there was discussion regarding whether some of the delay in LGI's response may have been because OPC served the interrogatories on SSU rather than LGI. OPC was unable to effectively demonstrate that it did serve the interrogatories upon LGI. In addition, OPC was unable to demonstrate that the prejudice, if any, engendered by LGI's untimely responses, is material enough to justify a continuance in this proceeding. Its motion for continuance is, therefore, denied.

SSU'S MOTION TO AMEND AND FOR A PROTECTIVE ORDER

On October 12, 1994, SSU filed a motion to amend and an amended joint motion for permanent protective order for proprietary confidential business information. The particular documents in question have been designated as Documents Nos. 01869-94 and 02262-94. In its motion, SSU requests that confidential classification be granted to these documents because they consist of federal income tax returns of Zoad, Inc., for the years 1987 through 1990, and State of Florida income tax returns for Zoad, Inc., for the years 1990 and 1992. SSU argues that, if the returns were made public, it would harm Zoad, Inc., and that Zoad, Inc., treats, and has treated the returns, as proprietary confidential business information. OPC did not oppose OPC's motion.

Since income tax returns of non-regulated affiliates are generally granted confidential classification by this Commission and since OPC does not oppose treating these documents as confidential, SSU's motion is granted.

It is therefore,

ORDERED by Commissioner Diane K. Kiesling, as Prehearing Officer, the Office of Public Counsel's October 3, 1994, motion for continuance is denied. It is further


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ORDERED that the motion for permanent protective order for Documents 01869-94 and 02262-94 filed by Southern States Utilities, Inc. and Lakeside Golf, Inc. is granted. It is further

ORDERED that, pursuant to Section 367.156(4), Florida Statutes, the confidentiality granted herein shall expire eighteen months from the date of this Order in the absence of a renewed request for a protective order. This Order shall be the only notification to the parties of the expiration of the protective order. It is further

ORDERED that this Prehearing Order shall govern the conduct of these proceedings as set forth above unless modified by the Commission.

By ORDER of Commissioner Diane K. Kiesling, as Prehearing Officer, this 27th day of October, 1994.



DIANE K. KIESLING, Commissioner and
Prehearing Officer

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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.