

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Investigation into) DOCKET NO. 930945-WS
Florida Public Service) ORDER NO. PSC-94-1558-PCO-WS
Commission jurisdiction over) ISSUED: December 13, 1994
SOUTHERN STATES UTILITIES, INC.)
in Florida.)

ORDER DENYING MOTION FOR IMPOSITION OF
ATTORNEYS FEES AND COSTS AGAINST HERNANDO COUNTY

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), 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.

On September 12, 1994, Hernando County filed the direct testimony of Buddy L. Hansen. On September 14, 1994, Hernando County filed the corrected testimony of Buddy L. Hansen. On October 5, 1994, SSU filed a motion to strike Mr. Hansen's testimony. On October 17, 1994, Hernando County filed a response to SSU's motion to strike. By Order No. PSC-94-1363-PCO-WS, issued November 9, 1994, as amended by Order No. PSC-94-1363A-PCO-WS, issued November 21, 1994, the Prehearing Officer granted SSU's motion to strike the testimony of Mr. Hansen. In addition, by Orders Nos. PSC-94-1363-PCO-WS and PSC-93-1363A-PCO-WS, the Prehearing Officer conferred party status upon Hernando County.

On October 25, 1994, SSU filed a motion for imposition of attorneys' fees and costs, pursuant to Section 120.57(1)(b)5, Florida Statutes, against Hernando County. Under Section 120.57(1)(b)5, Florida Statutes:

All pleadings, motions, or other papers filed in the proceeding must be signed by a party, the party's attorney, or the party's qualified representative. The signature of a party, a party's attorney, or a party's qualified representative constitutes a certificate that he has read the pleading, motion, or other paper and that, to the best of his knowledge, information, and belief formed after reasonable inquiry, it is not

DOCUMENT NUMBER-DATE

12497 DEC 13 1994

FPSC-RECORDS/REPORTING

interposed for any improper purposes, such as to harass or cause unnecessary delay or for frivolous purpose or needless increase in the cost of litigation. If a pleading, motion, or other paper is signed in violation of these requirements, the hearing officer, upon motion or his own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay the other party or parties the amount of reasonable expenses incurred because of the filing of the pleading, motion, or other paper, including a reasonable attorneys' fee.

According to SSU, under Section 120.57(1)(b)5, Florida Statutes, as interpreted by the Court in Mercedes Lighting and Electrical Supply, Inc. v. State, Department of General Services, 560 So.2d 272, 278 (Fla. 1st DCA 1990), sanctions will not be imposed if there was "a reasonably clear legal justification ... for the filing...." However, SSU argues that there is no justification for the prefiled testimony of Mr. Hansen because his testimony did not address any matters relevant to this proceeding, other than an impermissible legal opinion concerning the legislative intent of Section 367.171(7), Florida Statutes, and because Hernando County has never formally intervened.

On November 7, 1994, Hernando County filed a response to SSU's motion for imposition of attorneys' fees and costs. Hernando County argues that the imposition of attorneys fees and costs is an extraordinary measure which should only be undertaken upon a clear showing of improper purpose. According to Hernando County, since the issues in this case have not been finalized, testimony cannot be found to be irrelevant to the scope of the proceeding and, therefore, improper purpose cannot be shown.

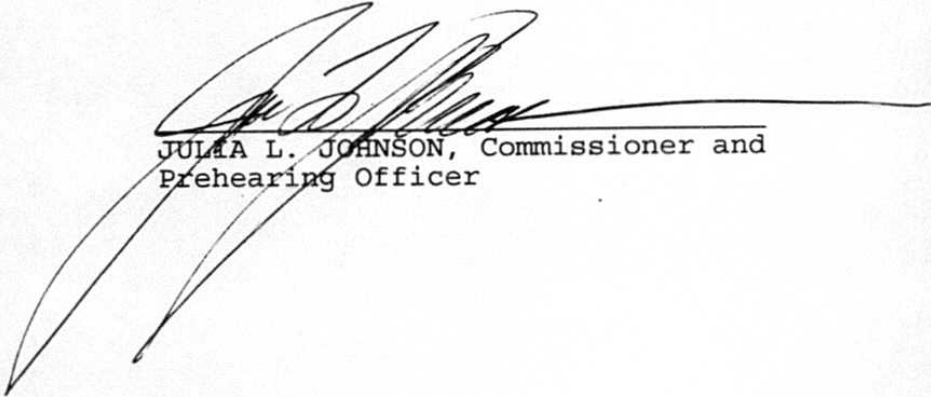
Although the testimony of Mr. Hansen has been found to be irrelevant to the scope of this proceeding, irrelevancy does not necessarily equate to improper purpose. SSU's motion for imposition of attorneys fees and costs against Hernando County is, therefore, denied.

It is, therefore,

ORDERED by Commissioner Julia L. Johnson, as Prehearing Officer, that the motion by Southern States Utilities, Inc. for imposition of attorneys' fees and costs against Hernando County, is denied.

ORDER NO. PSC-94-1558-PCO-WS
DOCKET NO. 930945-WS
PAGE 3

By ORDER of Commissioner Julia L. Johnson, as Prehearing Officer, this 13th day of December, 1994.



JULIA L. JOHNSON, Commissioner and
Prehearing Officer

(S E A L)

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.