

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Investigation Into) DOCKET NO. 930945-WS
Florida Public Service) ORDER NO. PSC-95-0369-PCO-WS
Commission Jurisdiction over) ISSUED: March 15, 1995
Southern States Utilities, Inc.,)
in Florida.)
_____)

ORDER GRANTING REQUESTS FOR ORAL ARGUMENT

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 SSU's operations in Hillsborough and Polk County under Section 367.171(7), Florida Statutes; however, we also initiated an investigation into our jurisdiction on a statewide, as opposed to a county by county, basis.

On January 23, 24, and 25, 1995, we held an administrative hearing in this case. On February 21, 1995, the parties filed their post-hearing statements, proposed findings of fact and conclusions of law, and briefs. In addition, Hernando, Hillsborough, and Sarasota County filed requests for oral argument. On March 3, 1995, SSU filed a response to Hillsborough and Sarasota Counties' requests for oral argument. On March 8, 1995, SSU filed a response to Hernando County's request for oral argument.

Sarasota County argues that "Oral Argument will aid the Commission in comprehending and evaluating the issues argued in the Brief by allowing the Commission the opportunity to ask clarifying questions regarding each of the issues raised."

Hillsborough County argues that oral argument should be granted because the issues are complex, wide-ranging, and of great public interest. Hillsborough County also contends that oral argument will allow the parties to explain their positions and answer questions posed by the Commission. Hillsborough County also appears to suggest that oral argument should be granted because the parties conserved one day of our time by completing the hearing in three, as opposed to the scheduled four days.

Hernando County argues that oral argument should be granted because the issues involved in this proceeding are of great present and future import. It also contends that the dispositive issues are all legal and, as such, have not been thoroughly explored at the hearing. Hernando County further argues that there are a number of issues and parties and that the parties will undoubtedly take varying approaches to the issues. Accordingly, Hernando

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County believes that oral argument will help clarify the issues and allow the parties to respond directly to the Commissioners' questions, something that cannot be done by written submissions alone. Hernando County further argues that granting oral argument will not expand the time this Commission expected to devote to this proceeding, since the hearing, originally scheduled for four days, was completed in only three. Finally, Hernando County requests that we allow each party twenty minutes, rather than the customary fifteen.

In its response, SSU states that Sarasota County's request is deficient because it does not demonstrate how oral argument will aid the Commission in understanding and evaluating the issues in this proceeding.

SSU also contends that Hillsborough County's request is deficient because it fails to "identify the particular pleading upon which argument is requested as required by the Rule." SSU also argues that Hillsborough County's request fails to allege any specific ground in support of oral argument. SSU further argues that Hillsborough County's suggestion that oral argument is appropriate because the parties shortened the hearing by one day is specious. According to SSU, although the Counties initially offered to "swap" cross-examination for oral argument, they reneged on their offer "by thoroughly cross-examining SSU witnesses Ludsen and Pelham on rebuttal."

SSU further asserts that oral argument is a departure from Commission practice. It argues that the issues in this proceeding are not complex and involve nothing more than an application of the facts to the relevant law. According to SSU:

The application of the law to the facts in this proceeding is not complex since the Commission and the First District Court of Appeal have consistently held that Section 367.171(7), Florida Statutes, requires the Commission to assert exclusive jurisdiction over a utility operating in a non-jurisdictional county if the land and facilities of the utility located in the non-jurisdictional county are functionally related to land and facilities of the utility situated outside of the non-jurisdictional county -- i.e., a system whose service transverses county boundaries.

Finally, SSU contends that, since it filed its initial petition for declaratory statement, the parties have appeared before the Commission on at least three occasions which involved oral argument on the very issues facing the Commission at this time.

As noted above, SSU filed a response to Hernando County's request for oral argument on March 8, 1995. Its response adopts the arguments made in its response to Hillsborough and Sarasota Counties' requests for oral argument.

On March 13, 1995, Hernando County filed a reply to SSU's response. Hernando County claims that SSU's response is not directly responsive to its request for oral argument. Hernando County also contends that SSU's argument that the legal issues are simple because the Commission and the First District Court of Appeal have previously decided the jurisdictional issues in SSU's favor is circular because it assumes an interpretation that the counties take issue with. Hernando County further argues that SSU's "suggestion that a party who participates in preliminary arguments should later be precluded from argument when the record is complete and before the full Commission is illogical and unfair." Finally, Hernando County contends that SSU's argument that the counties reneged on their offer to swap cross-examination for oral argument time is wrong, particularly with regard to Hernando County. According to Hernando County, its total cross examination comprises 4 out of a total of 940 transcript pages.

Under Rule 25-22.058, Florida Administrative Code, a party moving for oral argument must "state with particularity why oral argument would aid the Commission in comprehending and evaluating the issues it." Although it appears that Sarasota and Hillsborough Counties' requests for oral argument may be deficient, Hernando County's argument that the dispositive issues in this proceeding are legal and have not been thoroughly explored at the hearing is well-taken. Prior to their post-hearing filings, the parties have not had any opportunity to address these legal issues whatsoever. Neither has this Commission had any prior opportunity to explore them. Although SSU argues that this Commission and the First District Court of Appeal have "consistently" applied Section 367.171(7), Florida Statutes, there are very few cases which actually interpret that section. In addition, the factual situation before us at this time is not identical to any of those involved in previous interpretations of Section 367.171(7), Florida Statutes. The issues are not as clear as SSU contends.

For the reasons set forth above, the Prehearing Officer believes that it would be helpful to have the parties explain their positions and for the Commission to explore their arguments and

positions at oral argument. Accordingly, the parties' requests for oral argument and Hernando County's request to expand the time for argument from fifteen to twenty minutes per party are granted. Oral argument shall be heard on April 7, 1995, which was formerly scheduled for a special agenda conference in this matter, beginning at 9:30 a.m. Another special agenda conference shall be scheduled subsequent to oral argument.

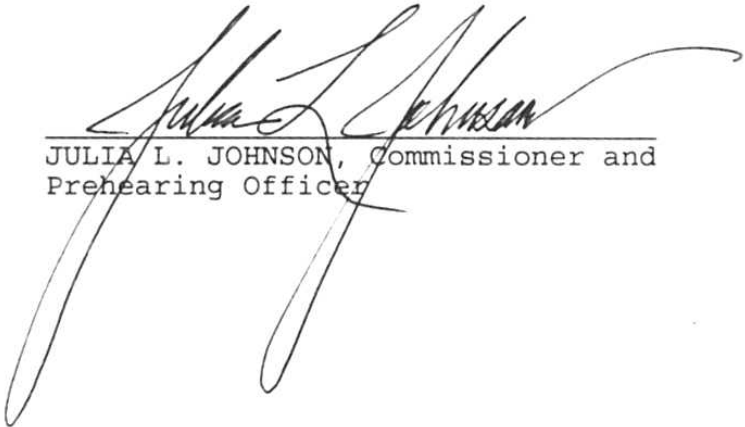
It is, therefore,

ORDERED by Commissioner Julia L. Johnson, as Prehearing Officer, that the parties' requests for oral argument are granted. It is further

ORDERED that oral argument shall be held on April 7, 1995, beginning at 9:30 a.m. It is further

ORDERED that Hernando County's request that oral argument be extended from fifteen to twenty minutes per party is granted.

By ORDER of Commissioner Julia L. Johnson, as Prehearing Officer, this 15th day of March, 1995.



JULIA L. JOHNSON, 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.