

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application for rate ) DOCKET NO. 950495-WS  
increase and increase in service ) ORDER NO. PSC-95-1352-FOF-WS  
availability charges by Southern ) ISSUED: November 1, 1995  
States Utilities, Inc. for )  
Orange-Osceola Utilities, Inc. )  
in Osceola County, and in )  
Bradford, Brevard, Charlotte, )  
Citrus, Clay, Collier, Duval, )  
Hernando, Highlands, )  
Hillsborough, Lake, Lee, Marion, )  
Martin, Nassau, Orange, Osceola, )  
Pasco, Polk, Putnam, Seminole, )  
St. Johns, St. Lucie, Volusia, )  
and Washington Counties. )

The following Commissioners participated in the disposition of this matter:

SUSAN F. CLARK, Chairman  
J. TERRY DEASON  
JOE GARCIA  
JULIA L. JOHNSON  
DIANE K. KIESLING

ORDER DENYING THE OFFICE OF THE PUBLIC COUNSEL'S  
FIRST MOTION TO DISMISS

BY THE COMMISSION:

Background

Southern States Utilities, Inc. (SSU or utility) is a Class A utility, which provides water and wastewater service to service areas in 25 counties. By letter dated May 4, 1995, the Chairman responded to the utility's request for a rate case application. In that letter, the Chairman requested that the utility file no later than August 2, 1995, and indicated that an extension of the filing date would not be granted.

On June 28, 1995, SSU filed an application with the Commission requesting increased water and wastewater rates for 141 services areas, pursuant to Section 367.081, Florida Statutes, and for an increase in service availability charges, pursuant to Section 367.101, Florida Statutes. The utility also requested that the

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Commission approve an allowance for funds used during construction (AFUDC) and an allowance for funds prudently invested.

The intervention of the Office of the Public Counsel (OPC), was acknowledged by Order No. PSC-95-0901-PCO-WS, issued on July 26, 1995. The Sugarmill Woods Civic Association, Inc., the Spring Hill Civic Association, Inc., and the Marco Island Civic Association, Inc., have also intervened.

The Commission recently reviewed the jurisdictional status of SSU's facilities throughout the state in Docket No. 930945-WS. In Order No. PSC-95-0894-FOF-WS, issued on July 21, 1995 (now on appeal), the Commission determined that SSU's facilities and land constituted a single system and that the Commission had jurisdiction over all of SSU's facilities and land throughout the state pursuant to Section 367.171, Florida Statutes.

The utility's initial filing in this docket did not include SSU's facilities in Hernando, Hillsborough and Polk Counties, and our staff advised the utility that after a review of the information, the filing was incomplete and the minimum filing requirements (MFRs) were deficient. Our staff listed nine specific deficiencies concerning schedules and other filings, and also stated that, because of the Commission's decision in Docket No. 930945-WS, the application must be modified to include Hernando, Hillsborough, and Polk Counties.

SSU agreed to provide information to satisfy the nine specific deficiencies, but asserted that the MFRs did not require the information on Hernando, Hillsborough and Polk Counties. This dispute was brought before the Commission at the August 1st Agenda Conference for resolution. The Commission found that the utility's filing was deficient and that the utility must include all of its facilities when seeking uniform rates (this decision was memorialized by Order No. PSC-95-1043-FOF-WS, issued on August 21, 1995). On August 2, 1995, the day after the Commission vote, SSU filed the information on Hillsborough, Polk, and Hernando Counties, but did not file any additional testimony. By letter, the Director of the Division of Water and Wastewater accepted the August 2d filing as completing the MFRs, and designated that date as the official filing date.

On August 29, 1995, OPC filed a motion to dismiss SSU's filing, and, on August 30, 1995, requested oral argument. On September 5, 1995, SSU filed a response to OPC's motion to dismiss SSU's filing and the request for oral argument.

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OPC'S Motion to Dismiss SSU's Filing

At the Agenda Conference held on October 10, 1995, we allowed OPC and SSU to present oral argument on OPC's Motion to Dismiss SSU's Filing and SSU's Response. In its motion, the OPC claims that Chairman Clark's May 4th letter required the filing to be complete by August 2, 1995, and that it implied that no extensions would be granted. OPC further argues that since the Director's letter did not go out until the second week of August, the filing could not be determined to be complete as of August 2, 1995 (as stated in the Director's letter). Specifically, OPC disputes the official date of filing because the filing is incomplete and because the date, as established by the Director of the Division of Water and Wastewater, was established retroactively. OPC claims that since SSU filed additional data on Hillsborough, Hernando, and Polk Counties, as required by the Commission, without filing additional or supplemental prefiled testimony, the MFRs are still not complete. The OPC also argues that the official date of filing is as of the time of the Director of Water and Wastewater's determination, and that since that determination came approximately 12 days after August 2, 1995, SSU did not comply with the Chairman's letter and the appropriate sanction is dismissal.

In its response, SSU argues that its testimony is in compliance with Rule 25-30.436, Florida Administrative Code, and is valid whether the three counties (Hernando, Hillsborough, or Polk) are included or not, and that the filing was complete by August 2, 1995.

The OPC is seeking a sanction in this case for a perceived deficiency in the filing. The courts have repeatedly held that "the severity of the sanction should be commensurate with the violation" and that "dismissal is inappropriate when the moving party is unable to demonstrate meaningful prejudice." See, Neal v. Neal, 363 So. 2d 810, 812 (Fla. 1st DCA 1994). Also, dismissal is a "drastic remedy" that should be used only in "extreme situations". Carr v. Dean Steel Buildings, Inc., 619 So. 2d 392 (Fla. 1st DCA 1993). Having reviewed the arguments, we find, that under the facts as set out above, the sanction of dismissal is not warranted. Therefore, OPC's Motion to Dismiss the Filing of SSU is denied, and this docket shall remain open.

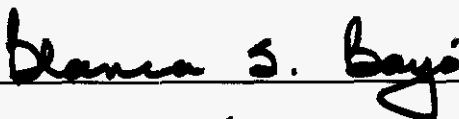
Based on the foregoing, it is, therefore,

ORDERED by the Florida Public Service Commission that the Office of Public Counsel's Motion to Dismiss the Filing of Southern States Utilities, Inc., is hereby denied. It is further

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ORDERED that this docket shall remain open for the further processing of this case.

By ORDER of the Florida Public Service Commission, this 1st day of November, 1995.

  
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BLANCA S. BAYÓ, Director  
Division of Records and Reporting

( S E A L )

RRJ

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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.