

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application for rate ) DOCKET NO. 950495-WS  
increase and increase in service ) ORDER NO. PSC-96-0821-PCO-WS  
availability charges by Southern ) ISSUED: June 25, 1996  
States Utilities, Inc. for )  
Orange-Osceola Utilities, Inc. )  
in Osceola County, and in )  
Bradford, Brevard, Charlotte, )  
Citrus, Clay, Collier, Duval, )  
Highlands, Lake, Lee, Marion, )  
Martin, Nassau, Orange, Osceola, )  
Pasco, Putnam, Seminole, St. )  
Johns, St. Lucie, Volusia, and )  
Washington Counties. )

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ORDER STRIKING JOINT POST-HEARING BRIEF  
AND ISSUES AND POSITIONS

By Order No. PSC-96-0715-PCO-WS, parties in this docket were required to file a post-hearing statement of issues and positions by June 10, 1996. The Marco Island Civic Association, Inc., Sugarmill Woods Civic Association, Inc., Concerned Citizens of Lehigh Acres, East County Water Control District, Citrus County Board of County Commissioners, Springhill Civic Association, Inc., Hidden Hills Country Club Homeowners Association, Citrus Park Homeowners Association and the Harbour Woods Civic Association (collectively known as Marco), filed a Joint Post Hearing Brief, consisting of 93 pages. However, Marco did not file a post-hearing statement of issues and positions.

On June 21, 1996, Marco filed a Clarification of Document as Post-Hearing Statement and Post-Hearing Brief. That document states that the post hearing brief "was intended as the Post-Hearing Statement as well as the Post-Hearing Brief, notwithstanding the lack of that wording in the title." The document further states that it was the intent of Marco to readopt all of its positions taken in its prehearing statement, including adopting the positions of the Office of Public Counsel, where no position was taken in the prehearing statement.

Rule 25-22.056(3), Florida Administrative Code, requires that in any proceeding where a prehearing order has been issued which requires a statement of the issues and positions of the parties, all post-hearing statements filed pursuant to the rule shall conform to the form and contents of the statement of issues and positions. The rule also requires each party to file a post-hearing statement of issues and positions, which includes a summary of each position of no more than 50 words. The 50 word limit is a summary of each position of no more than 50 words. The 50 word limit is a summary of each position of no more than 50 words.

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be modified for good cause shown, but any issue or position not included in a post-hearing statement shall be considered waived. Further, subparagraph (b) of Rule 25-22.056(3) specifically provides that where a party fails to file a post-hearing statement in conformance with (3)(a), and no other post-hearing memorandum is filed which conforms to the rule, that party "shall have waived all issues and may be dismissed from the proceeding."

In this proceeding, Order No. PSC-95-1208-PCO-WS, issued September 29, 1995, specifically set forth the requirements for post-hearing filings:

A summary of each position of no more than 50 words, set off with asterisks, shall be included in that statement. 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. (Order at 7)

It further required that arguments in briefs must be identified by issue number and that briefs must be filed at the same time as the statement of issues and positions.

Marco's post-hearing filings fail to meet the requirements of Rule 25-22.056(3) and Order No. PSC-95-1208-PCO-WS. The filings do not 1) contain a statement of issues and positions; 2) identify arguments by issue numbers; or 3) in "readopting" its positions in the prehearing statement, address the 50 word limit concerning positions.

The post-hearing requirements are set forth in the Commission's rules and specified in Order No. PSC-95-1208-PCO-WS. They are intended to give the Commission, the Commission Staff, and parties notice as to a particular party's final positions, and permit a meaningful, efficient and accurate review of that party's evidence and rationale. The lack of compliance on Marco's part is of particular concern here because of the enormity of this case.

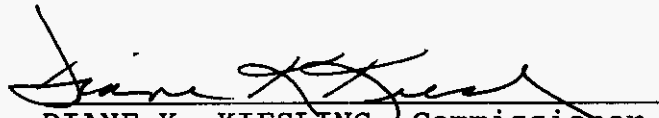
In consideration of the above, and in the absence of any explanation or mitigation of its failure to conform to the requirements of Order No. PSC-95-1208-PCO-WS and Rule 25-22.056(3)(a) and (b), Marco's Joint Post-Hearing Brief is hereby stricken and its positions and issues deemed to be waived. Marco may file a post-hearing statement and brief in conformity with Order No. PSC-95-1208-PCO-WS and Rule 25-22.056(3), by the close of business on Friday, June 28, 1996.

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Based on the foregoing, it is

ORDERED by Commissioner Diane K. Kiesling, as Prehearing Officer, that the June 10, 1996, Joint Post-Hearing Brief and the June 21, 1996, Clarification filed by the parties identified herein as Marco are hereby stricken and all issues and positions are deemed waived unless a posthearing statement and brief in conformance with this Order, Order No. PSC-95-1208-PCO-WS, and Rule 25-22.056(3) are filed by the close of business on Friday, June 28, 1996.

By ORDER of Commissioner Diane K. Kiesling, as Prehearing Officer, this 25th day of June, 1996.

  
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.