

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application of SOUTHERN STATES)	DOCKET NO. 891319-WU
UTILITIES, INC. for amendment of)	ORDER NO. 23274
Certificate 106-W to include Wedgewood)	ISSUED: 7-31-90
service area in Lake County)	
)	

ORDER DENYING MOTION TO DISPENSE WITH HEARING

On November 20, 1989, Southern States Utilities, Inc. (Southern States) filed an application to amend its water certificate to include the Wedgewood service area. On December 7, 1989, the Office of Public Counsel (OPC) filed its Notice of Intervention in the proceedings. We acknowledged the OPC's intervention in Order No. 22326, issued December 20, 1989. On January 19, 1990, a letter protesting Southern States' application was filed by the Wedgewood Homeowners Association (Association). A copy of that letter is attached as Attachment A to this Order.

On April 17, 1990, an Order Establishing Procedure for this proceeding was issued. This Order established controlling dates for all prehearing activities, as well as a hearing date of October 15, 1990.

On June 1, 1990, Southern States filed a Motion for Extension of Time to File Prefiled Testimony in this proceeding. On June 22, 1990, a Revised Procedural Order was issued granting an extension of time from June 1 to July 2, 1990, for the filing of Southern States' prefiled testimony.

On July 2, 1990, Southern States filed both its prefiled testimony and a Motion to Dispense with Hearing.

The basis for Southern States' Motion to Dispense with Hearing is that the letter from the Association filed on January 19, 1990, was not a request for a proceeding pursuant to Section 120.57, Florida Statutes. The utility contends that the letter does not comply with Section 367.045(4), Florida Statutes, which provides:

If, within 30 days after the last day that notice was mailed or published by the applicant, whichever is later, the commission receives from the Public Counsel, a governmental authority, or a utility or

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06843 JUL 31 1990

-PSC-RECORDS/REPORTING

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consumer who would be substantially affected by the requested certification or amendment a written objection requesting a proceeding pursuant to s. 120.57, the commission shall order such proceeding conducted in or near the area for which application is made, if feasible.

On July 12, 1990, OPC filed a Memorandum in Opposition to Motion to Dispense with Hearing. The Memorandum sets forth a number of arguments in support of treating the Association's letter as a request for hearing.

OPC states that the Association's letter expresses considerable concern with the outcome of Southern States' application. The letter states that the writer possesses "information and proof that should greatly influence the outcome of this application." The Commission has authority to construe the letter as a request for a hearing, particularly in light of the letter's reference to the existence of this evidence.

Additionally, OPC contends that Commission policy has been to apply a liberal standard in evaluating the adequacy of customer protests in fulfilling the statutory standard for requesting a Section 120.57, hearing. In this case, the Commission has in fact proceeded since January 1990 to treat the letter as an adequate request for hearing. A Procedural Order has been issued setting forth the hearing schedule in this docket. The Association and OPC have relied on the Commission's action in setting this matter for hearing and intend to prefile testimony.

OPC argues that a hearing is necessary in this proceeding to resolve disputed issues of fact surrounding the transfer of the system from the prior owner to Southern States. These factual conflicts create questions concerning what rate amounts, if any, should be grandfathered with Southern State's proposed transfer. The disputed facts also put at issue the legality of the transfer.

Finally, OPC points out that Southern States says in its Motion that it does not object to proceeding to hearing and presenting appropriate evidence and testimony to the Commission.

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Upon consideration of the foregoing, I find that the letter filed with the Commission on January 19, 1990, by the Wedgewood Homeowners Association satisfies the requirements of a request for a hearing pursuant to Section 120.57, Florida Statutes. Therefore, the Motion to Dispense with Hearing fails to provide sufficient grounds for dispensing with a hearing in this proceeding.

It is therefore,

ORDERED by Commissioner Thomas M. Beard, as Prehearing Officer, that the Motion to Dispense with Hearing of Southern States Utilities, Inc. is hereby denied.

By ORDER of Commissioner Thomas M. Beard, as Prehearing Officer, this 31st day of JULY, 1990.


THOMAS M. BEARD, Commissioner and
Prehearing Officer

(S E A L)

ASD

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.

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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 sewer 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.

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ATTACHMENT A

1990 JAN 19 11:57
 MAIL ROOM

JANUARY 15, 1990

BOARD OF DIRECTORS
 WEDGEWOOD HOME-OWNERS ASSOC.

RECEIVED

JAN 19 1990

Fla. Public Service Commission
 Division of Water and Sewer

MR. RALPH VONFOSSEN
 PUBLIC SERVICE COMMISSION
 101 E. GAINES STREET
 TALLAHASSEE, FL 32399-0865

MR. VONFOSSEN:

I AM A DULY ELECTED MEMBER OF THE WEDGEWOOD HOME-OWNERS ASSOCIATION. BEING SUCH I AM MUCH CONCERNED WITH THE OUTCOME OF DOCKET #891 319-WU. "THE APPLICATION OF SOUTHERN STATES UTILITIES, INC." FOR THE TRANSFER OF THE WEDGEWOOD WATER SYSTEM.

I HAVE IN MY POSSESSION COPIES OF YOUR AND MR. STENGER CORRESPONDENCE CONCERNING THIS MATTER. I ALSO HAVE IN MY POSSESSION INFORMATION AND PROOF THAT SHOULD GREATLY INFLUENCE THE OUTCOME OF THIS APPLICATION.

ITEM #1

ON FEBRUARY 28, 1989 MR. PACKETT PURCHASED AND CLOSED ON HIS HOME FROM MR. HERB STENGER, AT THAT TIME HE GAVE TO MR. STENGER, AS PER HIS REQUEST A CHECK FOR \$60.00. THIS \$60.00 CHECK WAS TO PAY FOR WATER IN ADVANCE AT THE RATE OF \$15.00 PER MONTH. (COPY OF CHECK TO BE FORWARDED WITH THIS CORRESPONDENCE.

ITEM #2

AFTER CHECKING WITH ALL RESIDENTS OF THIS SUBDIVISION PRIOR TO THE TAKEOVER OF THE WATER SYSTEM BY SOUTHERN STATES UTILITIES THEY WERE ALSO CHARGED \$15.00 PER MONTH FOR AN UNLIMITED AMOUNT. MYSELF AND ALL OTHERS CONCERNED DO NOT APPRECIATE THE LARGE INCREASE IN RATES. WE ARE ALSO CONCERNED ABOUT THE LENGTH OF TIME IT TOOK SOUTHERN STATES TO APPLY FOR A RATE (FIVE AND A HALF MONTHS) AFTER THEIR PURCHASE.

THE COMMISSIONS DECISION ON THEIR RATES GREATLY CONCERNS ME AND ALL OTHERS LIVING IN THIS SUBDIVISION. WE ALL FEEL THAT WE HAVE BEEN GREATLY VICTIMIZED BY BOTH MR. STENGER AND SOUTHERN STATES UTILITIES.

C.C. TO
 HOME-OWNERS ASSOC.
 MR. HERB STENGER
 FILE
 SOUTHERN STATES UTILITIES

RESPECTFULLY,

BOARD OF DIRECTORS
 WEDGEWOOD HOME-OWNERS ASSOC.