

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Southern States) DOCKET NO. 930945-WS
Utilities, Inc.'s Petition for a) ORDER NO. PSC-94-0686-DS-WS
Declaratory Statement Regarding) ISSUED: June 6, 1994
Commission Jurisdiction Over its)
Water and Wastewater Facilities)
in Hillsborough and Polk)
Counties.)
_____)

The following Commissioners participated in the disposition of this matter:

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

ORDER DENYING PETITION FOR DECLARATORY STATEMENT
AND INITIATING INVESTIGATION

BY THE COMMISSION:

Southern States Utilities, Inc., (Southern States or the utility) filed a Petition for Declaratory Statement on September 23, 1993, asking whether the Commission has exclusive jurisdiction over its water and wastewater facilities in Hillsborough and Polk Counties pursuant to section 367.171(7), Florida Statutes. Hillsborough County and Polk County have not elected to declare the counties subject to Commission regulation pursuant to the provisions of Chapter 367, Florida Statutes, and therefore retain jurisdiction over all private water and wastewater utilities except those to which section 367.171(7) applies. Southern States asserts that because of the interrelationship of its facilities and land in Polk, Hillsborough, Pasco, Hernando, and Orange Counties, its Polk and Hillsborough facilities and land are part of a system whose service transverses county boundaries within the meaning of section 367.171(7), Florida Statutes, and are therefore subject to the exclusive jurisdiction of the Commission. No interlocal agreement providing for the regulation of water or wastewater services has been entered into by the counties.

Notice of receipt of the petition was published in the Florida Administrative Weekly on October 8, 1993. Hillsborough County filed a petition to intervene on November 4, 1993, and a brief opposing Commission jurisdiction on November 15, 1993. On November 12, 1993, Polk County filed a petition to intervene and response to Southern States' petition. Thereafter, SSU filed responses to the counties' petitions to intervene and briefs. We

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first considered the petition at our March 8, 1994, Agenda Conference. The utility, Hillsborough County, Polk County, and Hernando County participated in our discussion at that Agenda Conference and at the May 17, 1994, Agenda Conference when we considered further proceedings and the emergency pleadings filed by Southern States on April 4, 1994. As discussed below, we conclude that the facts presented are insufficient for the Commission to determine, in a declaratory statement proceeding, the full extent of its jurisdiction over Southern States under section 367.171(7), Florida Statutes.

In its Petition for Declaratory Statement, Southern States asserts that all of its facilities and land, wherever located, are part of a single system with headquarters in Apopka. Its petition, however, concerns only our jurisdiction over its facilities in Polk and Hillsborough Counties. Southern States also provides water and wastewater services in the non-jurisdictional counties of Charlotte and Sarasota, but there is nothing in its petition explaining why those facilities and land are not also subject to our jurisdiction pursuant to section 367.171(7).

The Commission has previously considered its jurisdiction over utilities under section 367.171(7) in proceedings initiated by a utility through a petition for declaratory statement. One of these proceedings involved the jurisdictional status of Southern States' facilities and land in St. Johns County. While this method has been used in the past, we do not believe that we should continue to make piecemeal decisions about the jurisdictional status of Southern States' systems. We believe that it is preferable to review the administrative and operational relationships of all of Southern States' facilities and land for the purpose of determining the extent of our jurisdiction in a single proceeding.

We therefore conclude that without information about all of Southern States' facilities and land, the facts presented are inadequate to determine the full extent of the system that may be subject to our jurisdiction under section 367.171(7), Florida Statutes, and we decline to issue a declaratory statement. We believe this determination is properly made in an investigation proceeding.

To determine the applicability of section 367.171(7), Florida Statutes, the scope of the investigation shall include a determination of which of SSU's facilities and land in Florida are functionally related and a determination whether the combination of functionally related facilities and land, wherever located, constitutes a single system as that term is defined in section 367.021(11) and as contemplated in section 367.171(7).

The outcome of the investigation may also answer the jurisdictional question of systems Southern States acquires in the future. For instance, if we conclude that Southern States is a single system, any facilities and land acquired by it may be presumed jurisdictional and the utility may be required to file an application for an original certificate or an amendment to an existing certificate.

Because the investigation may result in a determination that Southern States is a single system for purposes of section 367.171(7), which would preclude a county's rescission of Commission jurisdiction over Southern States, notice that the investigation has been initiated shall be given to all counties. Notice shall also be published in the Florida Administrative Weekly and be sent to the governing bodies of each of the counties and to the Office of Public Counsel.

Prior to the consideration at our May 17, 1994, Agenda Conference of the appropriate form of subsequent proceedings to determine jurisdiction, Southern States filed an Emergency Petition for Determination of Interim Florida Public Service Commission Jurisdiction Over Southern States in Hernando County. The petition alleges many of the same facts and circumstances as those supporting its Petition for Declaratory Statement asking the Commission to determine its jurisdiction in Polk and Hillsborough counties. Additionally, however, Southern States argues that Hernando County's March 29, 1994, action revoking Commission jurisdiction will irreparably harm the utility. Southern States further asserts that the Commission has the authority to assert emergency interim jurisdiction pending a final determination of jurisdiction in this docket. No response to this petition has been filed by Hernando County.

We deny Southern States' emergency petition. We find that at this time, Southern States has not established that it will be irreparably harmed by Hernando County's action rescinding Commission jurisdiction. Pursuant to section 367.171(5), Florida Statutes, the Commission or the court retains jurisdiction in all pending cases. All other jurisdiction has been transferred to Hernando County by its resolution. As stated earlier regarding Commission jurisdiction pursuant to section 367.171(7), Florida Statutes, we have decided not to determine the jurisdictional status of the utility on a piecemeal county-by-county basis, but to look at it as a whole. The Commission's determination in the investigation proceeding of its jurisdiction under section 367.171(7), Florida Statutes, will encompass Southern States' systems in Hernando County.

ORDER NO. PSC-94-0686-DS-WS
DOCKET NO. 930945-WS
PAGE 4

Southern States' Emergency Motion to Clarify Commission Action is granted. As stated above, a determination of our jurisdiction over Southern States' systems in Hernando County will be made in the investigation. Hernando County's Motion to Dismiss Southern States' Emergency Motion to Clarify Commission Action is denied.

Based upon the foregoing, it is

ORDERED by the Florida Public Service Commission that the Petition for Declaratory Statement filed by Southern States Utilities, Inc., is denied. It is further

ORDERED by the Florida Public Service Commission that this docket be converted to an investigation to determine jurisdiction under section 367.171(7), Florida Statutes, over Southern States Utilities, Inc. It is further

ORDERED by the Florida Public Service Commission that Southern States Utilities, Inc.'s Emergency Petition for Determination of Interim FPSC Jurisdiction Over Southern States in Hernando County is denied. It is further

ORDERED by the Florida Public Service Commission that this docket shall remain open until the conclusion of the investigation.

By ORDER of the Florida Public Service Commission this 6th day of June, 1994.

BLANCA S. BAYÓ, Director
Division of Records and Reporting

by: Kay Flynn
Chief, Bureau of Records

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ORDER NO. PSC-94-0686-DS-WS
DOCKET NO. 930945-WS
PAGE 5

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 the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) 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 by filing a notice of appeal with the Director, Division of Records and Reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Civil Procedure. The notice of appeal must be in the form specified in Rule 9.900 (a), Florida Rules of Appellate Procedure.