

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Investigation into) DOCKET NO. 930945-WS
Florida Public Service) ORDER NO. PSC-95-0095-PCO-WS
Commission Jurisdiction over) ISSUED: January 18, 1995
SOUTHERN STATES UTILITIES, INC.)
in Florida)
_____)

ORDER DENYING HILLSBOROUGH COUNTY'S MOTION TO STRIKE PORTIONS OF
DIRECT TESTIMONY OF WITNESS ON BEHALF OF SOUTHERN STATES
UTILITIES, INC.

On December 12, 1994, Hillsborough County (the County) filed with this Commission a Motion To Strike Portions Of Direct Testimony Of Witness On Behalf Of Southern States Utilities, Inc. (SSU or the Utility). On June 6, 1994, the Commission issued Order No. PSC-94-0686-DS-WS, in which we denied SSU's petition for a declaratory statement delineating Commission jurisdiction over the utility's water and wastewater operations in the nonjurisdictional counties of Polk and Hillsborough under Section 367.171 (7), Florida Statutes. In that order, this Commission also initiated an investigation to determine

which of SSU's facilities and land in Florida are functionally related and ... 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).

Order No. PSC-94-0686-DS-WS at p.2.

On September 15, 1994, the Commission issued Order No. PSC-94-1133-PCO-WS, granting Hillsborough County leave to intervene in this docket. On September 12, 1994, SSU timely filed the direct testimony of William (Dave) Denny, Regional Manager of SSU's South Division. On December 12, 1994, the County filed a Motion to Strike Portions of Direct Testimony of Witness On Behalf of Southern States Utilities, Inc. (Motion to Strike), relative to the direct testimony of Mr. Denny. SSU filed the Response of Southern States Utilities, Inc. to Hillsborough County's Motion to Strike Portions of the Direct Testimony of William (Dave) Denny (Response) on December 19, 1994.

In the Motion to Strike, Hillsborough County requests that the Prehearing Officer strike all of Mr. Denny's testimony that concerns activities occurring in SSU's West Division and within

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Hillsborough County. The County states that Mr. Denny is insufficiently familiar with SSU's activities in the West Division, which is not under his supervision, and, therefore, is not competent to testify concerning how these activities constitute service transersing county boundaries within the West Division. SSU, in its Response, opposes the motion, stating that Mr. Denny is presumed to be a competent witness and that the County fails to meet its burden to establish that he is not competent to testify as to SSU's operations in its west region.

Competency, as applied to a witness, involves both capability and qualification. Crocket v. Cassels, 116 So. 865, 866 (Fla. 1928). Section 90.601, Florida Statutes, provides that every person is competent to be a witness, except as otherwise provided by statute.

No statute excludes that part of Mr. Denny's testimony to which the County objects. The County appears to challenge not Mr. Denny's competency, but the credibility of his testimony. The County may challenge Mr. Denny's credibility through cross examination at the January 23, 1995 administrative hearing, and the Commission will ultimately determine the weight and credibility of his testimony. For these reasons, Hillsborough County's Motion To Strike Portions Of Direct Testimony Of Witness On Behalf Of Southern States Utilities, Inc. is denied.

Based on the foregoing, it is, therefore,

ORDERED by Commissioner Julia L. Johnson, as Prehearing Officer, that Hillsborough County's Motion to Strike Portions of Direct Testimony of Witness On Behalf of Southern States Utilities, Inc. is hereby denied.

By ORDER of the Florida Public Service Commission, this 18th day of January, 1995.



JULIA L. JOHNSON, PREHEARING OFFICER
Florida Public Service Commission

(S E A L)

CJP

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.