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JACK SHREVE
PUBLIC COUNSEL

STATE OF FLORIDA
OFFICE OF THE PUBLIC COUNSEL

c/o The Florida Legislature
111 West Madison Street
Room 812
Tallahassee, Florida 32399-1400
904-488-9330

**ORIGINAL
FILE COPY**

August 29, 1995

Blanca S. Bayo, Director
Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

Re: Docket No. 950495-WS

Dear Ms. Bayo:

Enclosed for filing in the above-referenced docket are the original and 15 copies of Citizens' Motion to Dismiss.

Please indicate the time and date of receipt on the enclosed duplicate of this letter and return it to our office.

Sincerely,

Harold McLean
Associate Public Counsel

- ACK nm:bsr
- AFA 5
- APP Enclosures
- CAF
- CMC
- CTR
- EAC
- LEG 1
- LBI 5
- OSC
- ROP
- SEC 1
- WAS 3
- OTH

RECEIVED & FILED
[Handwritten initials]
AUG 30 1995
FBI - TALLAHASSEE

DOCUMENT NUMBER-DATE
08400 AUG 29 95
FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

Application for rate increase for)
Orange-Osceola Utilities, Inc. In) Docket No. 950495-WS
Osceola County, and in Bradford,)
Brevard, Charlotte, Citrus, Clay,)
Collier, Duval, Highlands, Lake,) Filed: August 29, 1995
Lee, Marion, Martin, Nassau, Orange,)
Osceola, Pasco, Putnam, Seminole,)
St. Johns, St. Lucie, Volusia, and)
Washington Counties, by Southern)
States Utilities, Inc.)

CITIZENS' MOTION TO DISMISS

The Citizens of the State of Florida, by and through JACK SHREVE, Public Counsel, move the commission to dismiss the above-referenced filing because:

SUMMARY:

In a recent decision, the commission required SSU to file MFRs including data from Hernando, Hillsborough, and Polk counties. On the next calendar day, SSU filed data apparently designed to meet the requirement of the decision, to the apparent satisfaction of Charles Hill, who issued a letter retroactively approving both the date and adequacy of filing. Although commission rules, and the test year approval letter from Chairman Clark, require supporting testimony to be filed as part of the MFRs, the MFRs for the three counties do not include testimony. The MFRs were deficient at the time of Mr. Hill's letter and are still deficient as of the date of this motion.

Even if the MFRs had included the testimony (which they do not) Mr. Hill's letter erroneously establishes the filing date

retrospectively. The Commission rule delegating authority to Mr. Hill for establishing the official date of filing, and the test year approval letter from Chairman Clark establish the official filing date as of the time of the commission's determination is made, not the date of the utility's filing.

The Citizens dispute the official date of filing because the filing is incomplete and because the date, as established by Mr. Hill, was established retroactively.

Chairman Clark's test year letter required the utility to file its case no later than August 2, 1995; it further represents that no extension of this filing date would be granted.

Since complete MFRs have not been filed and accepted by the commission before the deadline established by Chairman Clark, the case should be dismissed.

ARGUMENT

Filing Deadline:

On May 4, 1995, Chairman Clark sent a letter to Brian P. Armstrong, of which the Office of Public Counsel received a copy. After acknowledging SSU's request for approval of a test year, the letter provides in relevant part:

Your petition will not be deemed filed until we have received the petition, revised tariff sheets, the minimum filing requirements and the filing fee. To minimize any regulatory lag that may occur, we request that you file the above no later than August 2, 1995. Because of the difficulty in scheduling hearing dates it is not anticipated that an extension of this filing date will be approved.

(Chairman Clark's letter is attached as Exhibit A.)

Since, as argued below, SSU still has not met minimum filing requirements, SSU has failed to meet the filing deadline set by the commission through its Chairman, Susan F. Clark. If the deadline is not enforced by the commission--if no sanction is to attach to a utility's failing to meet the deadline--then the commission's directive issued through its chairman goes for naught.

Since approval of the test year appears to be conditional upon the timely receipt of MFRs, the Citizens suggest that the only appropriate sanction for missing the deadline is commission withdrawal of the approval of the test year and dismissal of the case.

Lack of Testimony:

The MFRs as they now stand do not include prefilled direct testimony supporting data from the three counties and are thus deficient.

1. On June 28, 1995, the Citizens (and apparently, the commission) received a filing from SSU which purported to meet minimum filing requirements to initiate a rate relief case;
2. On August 21, 1995, the commission issued Order No. PSC-95-1043-FOF-WS which found the MFRs filed by the utility deficient for failing to include Hernando, Hillsborough, and Polk counties from the MFRs. The August 21 order reflected an August 1 vote by the commission;
3. On August 2, 1995, the Citizens (and apparently the commission) received a revised filing by SSU purporting to satisfy the MFRs for all of SSU, including the three counties addressed in the commission order;
4. Rule 25-30.025, Florida Administrative Code requires the inclusion of testimony in the MFRs, as does the letter sent by Chairman Clark to Brian P. Armstrong quoted above, which provides: "You should also be aware that prefilled direct testimony must be filed with the [MFRs]."
5. Neither the August 2, 1995 filing nor the June 28 filing includes testimony which would support the various schedules, etc. included for the three counties addressed in the commission order;
6. On August 15, 1995, the Citizens received a letter from Charles H. Hill of the commission staff, to Brian P. Armstrong,

apparently issued on or about August 14¹, which says:

Please be advised that the minimum filing requirements have now been met and that the official date of filing for the above case is hereby established as August 2, 1995.

(Mr. Hill's letter is attached as Exhibit B) Mr. Hill's letter, aside from its other shortcomings, does not address the lack of testimony addressing the three counties;

7. The official date of filing is of critical importance to the Citizens: our meaningful point of entry into the administrative process depends on having information (including testimony) in hand from the date of filing. The Citizens cannot evaluate testimony which they do not yet have. The matter is directly addressed by Chairman Susan F. Clark in her letter of May 4, 1995 in which she said:

The utility is instructed to file all information it wishes the Commission to consider when arriving at a decision on its rate case application with its original filing. Because of the time limitations contained in Section 367.081, Florida Statutes, and the lengthy auditing and investigation required, information not filed with the original application may not be considered.

The MFRs do not include supporting testimony. The opportunity for SSU to supplement the filing is foreclosed by the commission because "information not filed with the original application may not be considered." Thus the MFRs are deficient, and Mr. Hill's letter finding to the contrary is erroneous.

¹ The date on the face of the letter, June 26, 1995, is apparently in error.

Retroactive Approval of Official Filing Date:

Even if the MFRs had included the testimony for the three counties (which they do not) Mr. Hill's letter is still in error.

8. Mr. Hill's August 14th letter purports to retroactively find the MFRs to have been met. His letter provides in substance:

Please be advised that the minimum filing requirements have now been met and that the official date of filing the above case is hereby established as August 2, 1995.

Rule 25-30.025(1) conditionally delegates the authority to establish an official filing date in the Director of the Division of Water and Wastewater. It provides:

(1) The 'official date of filing' is the date on which the Director of the Division of Water and Wastewater determines the utility has filed completed sets of the minimum filing requirements (MFRs), including testimony that may be required by Rule 25-30.436(2) and [payment of the filing fee]

By the plain language of the rule (which is essentially a rule of delegation, and ought to be strictly construed) the official date of filing is the date of the director's determination, not the utility's date of filing. Moreover, Chairman Clark's May 5th letter provides:

Under the file and suspend law, the time period for processing the request will begin when all of the required data is [sic] filed and accepted as complete. If not complete, the official filing date will be the date the corrections to the deficiencies are accepted.

Chairman Clark's letter is consistent with the commission rule: the Chairman says where the MFRs are not complete, it is not the date of filing by the utility which controls, it is the date

acceptance by the commission.

9. Mr. Hill's letter retroactively establishes the filing date in contravention of the commission rule on the subject and in contravention of Chairman Clark's test year letter.


10. The official date of filing in this case has not yet occurred: it will occur (if at all) when the commission correctly accepts the filing as complete, the actual date of filing notwithstanding. Moreover, the commission cannot accept the MFRs as complete until the utility files direct testimony addressing the three counties which the commission required be included in this filing.

11. The commission has issued a number of orders which presume that SSU has met minimum filing requirements. They include, but may not be limited to, orders on service hearings one, two, and three; and order on discovery. The commission has also issued a Case Assignment and Scheduling Record which indulges the same presumption and establishes dates pendant on the erroneous official filing date.

WHEREFORE, the Citizens of the State of Florida move the commission: to dismiss this case for failure to file complete MFRs within the deadline established by Chairman Clark; to rescind all commission orders which presume that the filing requirements have been met; to determine that the MFRs filed by SSU thus far are deficient; to determine that Mr. Hill's letter issued on or about August 14, 1995 finding to the contrary is erroneous; and to reaffirm that the official date of filing is in any case the date which the commission accepts the filing as complete.

Respectfully submitted,

JACK SMREVE
PUBLIC COUNSEL



Harold McLean
Associate Public Counsel

Office of Public Counsel
c/o The Florida
Legislature
111 West Madison Street
Room 812
Tallahassee, FL 32399-
1400

Attorney for the Citizens
of the State of Florida

**CERTIFICATE OF SERVICE
DOCKET NO. 950495-WS**

I HEREBY CERTIFY that a correct copy of the foregoing has been furnished by U.S. Mail or hand-delivery* to the following parties on this 29rd day of August, 1995.


Ken Hoffman, Esq.
William B. Willingham, Esq.
Rutledge, Ecenia, Underwood,
Purnell & Hoffman, P.A.
P.O. Box 551
Tallahassee, FL 32302-0551

Brian Armstrong, Esq.
Matthew Feil, Esq.
Southern States Utilities
General Offices
1000 Color Place
Apopka, FL 32703

Kjell W. Petersen
Director
Marco Island Civic Association
P.O. Box 712
Marco Island, FL 33969

*Lila Jaber, Esq.
Division of Legal Services
Fla. Public Service Commission
2540 Shurmond Oak Blvd.
Tallahassee, FL 32399

Michael B. Twomey, Esq.
P. O. Box 5256
Tallahassee, Florida
32314-5256



Harold McLean
Associate Public Counsel

Susan F. Clark
Chairman

State of Florida



Fletcher Building
101 East Gaines Street
Tallahassee, FL 32399-0852
(904) 488-5573
FAX (904) 487-1716

Public Service Commission

May 4, 1995

MAY 1995

Mr. Brian P. Armstrong
Southern States Utilities, Inc.
1000 Color Place
Apopka, Florida 32703

Public Commission

Re: Docket No. 950495-WS, Application of Southern States Utilities, Inc. and Orange Osceola Utilities, Inc. for Increased Water and Wastewater Rates - Test Year Approval

Dear Mr. Armstrong:

We have received your letter dated April 26, 1995, requesting approval to use a projected test year ended December 31, 1996. You further state that the application will include all of the Southern States Utilities, Inc. systems under the Commission's jurisdiction at the time of filing along with recently acquired Orange Osceola Utilities, Inc. Your letter also requests the use of an historical base year ended December 31, 1994, with an intermediate year ended December 31, 1995. The letter further indicates that the company is requesting approval to use a projected test year ended December 31, 1995, for interim purposes. Your test year request as outlined above is hereby approved. You should also be aware that prefiled direct testimony must be filed with the minimum filing requirements if you do not elect to request the proposed agency action process.

For administrative purposes only, Docket No. 950495-WS has been assigned to the forthcoming case. Your petition will not be deemed filed until we have received the petition, revised tariff sheets, the minimum filing requirements and the filing fee. To minimize any regulatory lag that may occur, we request that you file the above no later than August 2, 1995. Because of the difficulty in scheduling hearing dates it is not anticipated that an extension of this filing date will be granted.

Under the file and suspend law, the time period for processing the request will begin when all of the required data is filed and accepted as complete. If not complete, the official filing date will be the date the corrections to the deficiencies are accepted. The utility is instructed to file all information it wishes the Commission to consider when arriving at a decision on its rate case

EXHIBIT 'A'

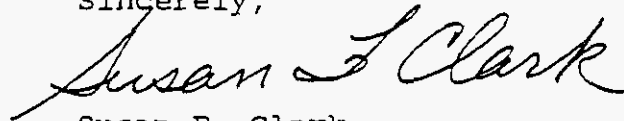
An Affirmative Action / Equal Opportunity Employer

252

Mr. Brian P. Armstrong
May 4, 1995
Page Two

application with its original filing. Because of the time limitations contained in Section 367.081, Florida Statutes, and the lengthy auditing and investigation required, information not filed with the original application may not be considered. Lastly, the utility should be prepared to justify all increased operation and maintenance expenses, particularly those in excess of customer growth and inflation since the Utility's most recent rate case.

Sincerely,



Susan F. Clark
Chairman

SFC/MWW

cc: Commissioners
Mr. Talbott
Dr. Bane
Nanette Fisher
Division of Records and Reporting
Division of Legal Services (Jaber)
Division of Water and Wastewater (Willis)
Jack Shreve, Office of Public Counsel
Kenneth A. Hoffman, P.A.

Commissioners:

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



DIVISION OF WATER &
 WASTEWATER
 CHARLES HILL
 DIRECTOR
 (904) 488-8482

Public Service Commission

June 26, 1995

RECEIVED

AUG 15 1995

Office of
 Public Counsel

Mr. Brian P. Armstrong
 Southern States Utilities, Inc.
 1000 Color Place
 Apopka, Florida 32703

RE: Docket No. 950495-WS, Application of Southern States Utilities, Inc. and Orange Osceola Utilities, Inc. for increased water and wastewater rates.

Dear Mr. Armstrong:

Please be advised that the minimum filing requirements have now been met and that the official date of filing for the above case is hereby established as August 2, 1995.

Sincerely,

A handwritten signature in cursive script, appearing to read "Charles H. Hill".

Charles H. Hill
 Director

cc: Division of Records and Reporting
 Division of Water and Wastewater (Willis, Crouch, Merchant, Rendell)
 Division of Legal Services (Jabor, O'Sullivan)
 Jack Shreve, Office of Public Counsel
 Kenneth A. Hoffman, P.A.

EXHIBIT 'B'