

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application for rate ) DOCKET NO. 950495-WS  
increase and increase in service ) ORDER NO. PSC-95-1387-PCO-WS  
availability charges by Southern ) ISSUED: November 8, 1995  
States Utilities, Inc. for )  
Orange-Osceola Utilities, Inc. )  
in Osceola County, and in )  
Bradford, Brevard, Charlotte, )  
Citrus, Clay, Collier, Duval, )  
Hernando, Highlands, )  
Hillsborough, Lake, Lee, Marion, )  
Martin, Nassau, Orange, Osceola, )  
Pasco, Polk, Putnam, Seminole, )  
St. Johns, St. Lucie, Volusia, )  
and Washington Counties. )

ORDER DENYING OFFICE OF PUBLIC COUNSEL'S  
MOTION FOR APPOINTMENT OF COUNSEL

On September 18, 1995, the Office of Public Counsel (OPC or Public Counsel) filed a Motion for Appointment of Counsel in the above-referenced docket. OPC asserts that the uniform rate structure requested by the utility, Southern States Utilities, Inc., (SSU or utility) creates two distinct customer groups whose interests are adverse, and that Public Counsel's representation of either group would be harmful to the other group's interests. OPC has cited Rule 4-1.7 of the Rules of Professional Conduct, which prohibits a lawyer from representing a client if that representation will be directly adverse to the interests of another client. OPC requests that the Commission require SSU to provide funds for representation of both groups of customers.

SSU filed a response on October 2, 1995. SSU contends that the Commission lacks the statutory authority to grant OPC's request. OPC has deferred from advocating rate design positions in past cases without filing a similar motion. SSU argues that the customers have received notice of the uniform rate structure and may participate in the hearings. SSU contends that OPC incorrectly assumes that all customers in each group would have the same position regarding uniform rates, and further points out that there may be more than two groups of customers. SSU claims that the granting of OPC's request would result in bad public policy and an escalation of rate case expense.

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

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This Commission has no authority to appoint additional counsel as requested by OPC. Chapters 350 and 367, Florida Statutes, are silent on the provision for appointment of counsel in the event of conflict.

The Public Counsel is authorized to represent the "general public" and to file actions and appear in the name of the State or its citizens, pursuant to Sections 350.061 and .0611, Florida Statutes. This responsibility is somewhat analogous to the Attorney General's responsibility to appear on behalf of the State or its individual agencies. However, where professional conflict of interest is present, the Attorney General is authorized to obtain other counsel. See Section 16.015, Florida Statutes. Also, where the State provides counsel to indigent defendants, the statutes also address the authority to appoint other counsel in the event of conflict. See Sections 27.53, 925.036, and 27.703, Florida Statutes. As noted above, the statutes are silent on the authority of Public Counsel to seek other counsel where he perceives a conflict of interest. In addition, none of the above cited statutes require the opposing party to provide additional counsel in the event of conflict. If there is authority for the Public Counsel to seek other counsel due to conflict, neither the authority to appoint such counsel, nor the authority to charge the utility seeking rate relief for the services of additional counsel, resides in the Public Service Commission.

Further, rate design is still at issue in this proceeding. OPC incorrectly assumes that the alleged professional conflict applies only to classes of customer which will be "winners" or "losers" under the single tariff rate structure. The record developed in this case as it proceeds through the hearing process will determine whether the rate structure will be single tariff or stand-alone or some variation on the continuum between these two extremes. For this reason also, even if it were within our authority to grant OPC's request, it would be denied. It is premature to classify SSU customers in this rate case into two distinct groups as suggested by OPC.

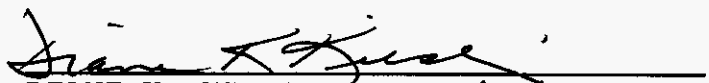
Accordingly, OPC's motion for appointment of counsel is denied. The Commission is without authority to grant OPC's request.

Based on the foregoing, it is therefore,

ORDERED by Commissioner Diane K. Kiesling, as Prehearing Officer, that the Office of Public Counsel's Motion for Appointment of Counsel is hereby denied.

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By ORDER of Commissioner Diane K. Kiesling, as Prehearing  
Officer, this 8th day of November, 1995.

  
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DIANE K. KIESLING, Commissioner and  
Prehearing Officer

( S E A L )

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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.