

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application for rate ) DOCKET NO. 950495-WS  
increase and increase in service ) ORDER NO. PSC-95-1394-PCO-WS  
availability charges by Southern ) ISSUED: November 9, 1995  
States Utilities, Inc. for )  
Orange-Osceola Utilities, Inc. )  
in Osceola County, and in )  
Bradford, Brevard, Charlotte, )  
Citrus, Clay, Collier, Duval, )  
Highlands, Lake, Lee, Marion, )  
Martin, Nassau, Orange, Osceola, )  
Pasco, Putnam, Seminole, St. )  
Johns, St. Lucie, Volusia, and )  
Washington Counties. )

ORDER DECLINING TO RULE UPON CITIZENS' SEVENTH AND EIGHTH MOTIONS  
TO COMPEL, DENYING CITIZENS' SEVENTH AND EIGHTH MOTIONS TO  
POSTPONE DATE FOR FILING INTERVENOR TESTIMONY, AND  
MODIFYING ORDER NO. PSC-95-1208-PCO-WS TO EXTEND THE TIME  
FOR FILING TESTIMONY AND PREHEARING STATEMENTS

On October 12, 1995, the Citizens of Florida, by and through the Office of Public Counsel, (OPC) filed their Seventh Motion to Compel and Seventh Motion to Postpone Date for Filing Intervenor Testimony. On October 13, 1995, OPC filed their Eighth Motion to Compel and Eighth Motion to Postpone Date for Filing Intervenor Testimony. Southern States Utilities, Inc., (SSU) filed its responses to these combined motions on October 19 and 20, 1995, respectively. Because OPC has requested the same relief by both combined motions, and because SSU has since responded to all the discovery requests which are the subjects of these motions, it is appropriate to address them in one order.

MOTIONS TO COMPEL

By the motions to compel, OPC requests that the Commission compel SSU to immediately answer certain interrogatories and requests for production of documents from OPC's third, fourth, and fifth sets of interrogatories and requests for production of documents. In its responses thereto, SSU requests the Commission to deny the motions. SSU contends that it has complied with the vast majority of OPC's requests, that OPC has the burden of proof to show that it is prejudiced by a late answer, and that OPC is not, in fact, prejudiced by any late answers.

DOCUMENT NUMBER-DATE

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Since the time of filing of the pleadings, SSU has supplied responses to all of OPC's requests. Therefore, it is unnecessary to rule upon OPC's Seventh and Eighth Motions to Compel.

MOTIONS TO POSTPONE DATE FOR FILING INTERVENOR TESTIMONY

OPC requests that the Commission postpone the date for filing intervenor testimony on a day-for-day basis for every day of delay encountered by OPC in receiving the requested documents. In the motions, OPC argues that the delay in obtaining the discovery requests from SSU has harmed their case. They argue that SSU has ignored production of discovery on its due date, and has frustrated OPC's right to discovery. SSU responds that it has responded timely to the vast majority of the hundreds of discovery requests, and that OPC cannot claim comprehensive prejudice by a minimal number of responses which are a few days late. SSU asserts that it is OPC's burden of proof to show that it is prejudiced by any late submittal of discovery responses. Finally, SSU argues that OPC's motions fail to mention SSU's responsiveness to OPC's requests made outside of formal discovery procedures.

OPC's requests to postpone the date for filing intervenor testimony is unpersuasive and is hereby denied. SSU has responded to the discovery requests at issue herein. Moreover, SSU has answered the majority of OPC's discovery requests in a manner that gives OPC sufficient time to prepare testimony. However, should SSU be unable to timely respond to any future discovery requests, it shall, within 30 days after service of the request, so notify the party requesting the discovery and apply to the prehearing officer for an extension of time to respond to the discovery for good cause shown.

MODIFICATION OF ORDER NO. PSC-95-1208-PCO-WS TO  
EXTEND THE TIME FOR FILING TESTIMONY AND PREHEARING STATEMENTS

Based on issues raised at the November 7th Agenda Conference, the Commission will consider the sufficiency of the notice and synopsis in this case at the November 21st Agenda Conference. By Order No. PSC-95-1208-PCO-WS, issued September 29, 1995, Intervenors', including OPC's, testimony was required to be filed by November 20, 1995. Because any decision made by the Commission at the November 21st Agenda Conference may materially affect OPC's and other Intervenors' issues and testimony, and because the schedule of this case can accommodate a brief enlargement of time, the filing of testimony and prehearing statements is hereby extended as set forth below:

- 1) Intervenors', including OPC's,  
direct testimony and exhibits November 27, 1995
- 2) Staff's direct testimony  
and exhibits, if any December 13, 1995
- 3) Rebuttal testimony  
and exhibits December 22, 1995
- 4) Prehearing Statements December 22, 1995

Order No. PSC-95-1208-PCO-WS is hereby reaffirmed in all other respects.

Based on the foregoing, it is

ORDERED by Commissioner Diane K. Kiesling, as Prehearing Officer, that OPC's Seventh Motion to Postpone Date for Filing Intervenor Testimony is denied. It is further

ORDERED that the OPC's Eighth Motion to Postpone Date for Filing Intervenor Testimony is denied. It is further

ORDERED that if Southern States Utilities, Inc., is unable to timely respond to any further pending discovery request(s), it shall, within 30 days after service of such discovery request(s), so notify the party requesting the discovery and apply to the prehearing officer for an extension of time to respond to the discovery for good cause shown. It is further

ORDERED that Order No. PSC-95-1208-PCO-WS, issued September 29, 1995, in this docket, is revised to the extent set forth within the body of this order. It is further

ORDERED that Order No. PSC-95-1208-PCO-WS is hereby reaffirmed in all other respects.

By ORDER of Commissioner Diane K. Kiesling, as Prehearing Officer, this 9th 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.