

RUTLEDGE, ECENIA, UNDERWOOD, PURNELL & HOFFMAN

PROFESSIONAL ASSOCIATION
ATTORNEYS AND COUNSELORS AT LAW

STEPHEN A. ECENIA
KENNETH A. HOFFMAN
THOMAS W. KONRAD
R. DAVID PRESCOTT
HAROLD F. X. PURNELL
GARY R. RUTLEDGE
R. MICHAEL UNDERWOOD
WILLIAM B. WILLINGHAM

POST OFFICE BOX 551, 32302-0551
215 SOUTH MONROE STREET, SUITE 420
TALLAHASSEE, FLORIDA 32301-1841

GOVERNMENTAL CONSULTANTS:
PATRICK R. MALOY
AMY J. YOUNG

TELEPHONE (904) 681-6788
TELECOPIER (904) 681-6515

November 9, 1995

RECEIVED
FILE DEPT

Ms. Blanca S. Bayo, Director
Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Betty Easley Conference Center
Room 110
Tallahassee, Florida 32399-0850

HAND DELIVERY

Re: Docket No. 950495-WS

Dear Ms. Bayo:

Enclosed herewith for filing in the above-referenced docket on behalf of Southern States Utilities, Inc. ("SSU") are the following documents:

- 111 82-951. Original and fifteen copies of SSU's Response to OPC's Motion for Reconsideration and OPC's Request for Oral Argument;
- 2. A disk in Word Perfect 6.0 containing a copy of the document entitled "OPC-RCN2.RSP"; and
- 111 85-95 3. Original and fifteen copies of SSU's Response to Association's Motion for Reconsideration of Order No. PSC-95-1327-~~POP~~-WS.

Please acknowledge receipt of these documents by stamping the extra copy of this letter "filed" and returning the same to me.

Thank you for your assistance with this filing.

Sincerely,

Bill Willingham for
Kenneth A. Hoffman

KAH/r1
cc: All Parties of Record
Trib: 3

RECEIVED
W. Wells
79
FLORIDA BUREAU OF RECORDS

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application by Southern States Utilities, Inc. for rate increase and increase in service availability charges for 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.

FILE COPY

Docket No. 950495-WS

Filed: November 9, 1995

SSU'S RESPONSE TO ASSOCIATIONS' MOTION FOR RECONSIDERATION OF ORDER NO. PSC-95-1327-FOF-WS

SOUTHERN STATES UTILITIES, INC., ("SSU") by and through its undersigned counsel, and pursuant to Rules 25-22.037(2)(b) and 25-22.060(1)(c), Florida Administrative Code, hereby files this Response to the Motion for Reconsideration of Order No. PSC-95-1327-FOF-WS (the "Motion") filed by the Sugarmill Woods Civic Association, Inc.; the Marco Island Civic Association, Inc.;¹ and the Spring Hill Civic Association, Inc.,² (collectively "the

¹ On September 19, 1995, the Marco Island Civic Association, Inc., ("MICA") served on SSU a document entitled "Notice of Successor Party to Marco Island Civic Association, Inc." This document purported to notify the Commission and the parties that the Marco Island Fair Water Rate Defense Fund Committee ("the Committee") would "take the place" of MICA as a party to this proceeding. SSU assumes that the identification of MICA as one of the movants here was in error, since MICA has withdrawn as a party. If, however, this is not the case, SSU requests that counsel for MICA and the Committee clarify the roles of these entities.

² On October 13, 1995, as memorialized in Order No. PSC-95-1385-FOF-WS, issued November 7, 1995, the Commission voted to exclude SSU's service areas in Polk, Hernando, and Hillsborough Counties from the instant rate proceeding. As a result of this decision, the Springhill Civic Association, Inc. no longer has a substantially affected interest in the outcome of this proceeding

DOCUMENT NUMBER-DATE

1118 | NOV-9 3495

FPSC-RECORDS/REPORTING

Associations") on November 2, 1995. In its Motion, the Associations request that the full Commission reconsider Order No. PSC-95-1327-FOF-WS, issued November 1, 1995, whereby the Commission denied SSU's request for interim rates. In support of this Response, SSU states as follows:

1. The Association's Motion should be stricken as an improper pleading. In its Motion, the Associations ask that the Commission reconsider only that portion of the Order whereby the Commission determined SSU "may have a 'second bite of the apple' by filing yet another request for interim rates." Motion at p. 2. Yet, by Order No. PSC-95-1327-FOF-WS, the very order the Associations now request the Commission to reconsider, the Commission agreed with the arguments SSU made in SSU's September 6 Response to OPC's Motion to Dismiss Request for Interim Rate Increase ("OPC's Motion to Dismiss Interim") that OPC did not have standing to participate in interim rate determinations.³ The Commission specifically ruled as follows:

Section 367.082, Florida Statutes, and our procedures do not contemplate parties filing a response or motion regarding a utility's request for interim rates.

. . . . [W]e find that OPC's motion to dismiss the interim rate request is an inappropriate motion and shall be denied.

Order No. PSC-95-1327-FOF-WS at pp. 7, 8.⁴ The Associations'

and should be dismissed as a party.

³ The Associations' joined in the OPC Motion and should suffer the same fate.

⁴ While parties are not allowed to participate in the interim rate determination, the Commission has allowed a **utility** to file a

Motion does not ask the Commission to reconsider the above-quoted portion of the Order. SSU maintains that the Associations do not have standing to participate in Commission interim rate determinations for the reasons explained in SSU's September 6 Response to OPC's Motion to Dismiss Interim, which is by reference incorporated herein. The Associations do not somehow gain the standing they lack to participate in the initial interim rates determination by filing a motion for reconsideration to an order reflecting such a determination. Moreover, the Associations make no effort in the instant Motion to meet the test for reconsideration established in Diamond Cab Co. of Miami v. King, 146 So.2d 889 (Fla. 1962), as to the Commission's decision regarding standing. For the foregoing reasons, the Associations' Motion should be stricken as an improper pleading by persons lacking standing.


2. If the Commission considers the substance of the Associations' Motion, the Motion should be denied. The Associations make no attempt whatsoever to meet the standard for reconsideration established in Diamond Cab, supra. The Associations cite no statute, no case law, no authority of any kind in support of its contention. Nor do the Associations specifically identify a mistake of fact or a mistake of law which the Commission

suggestion of error to a staff recommendation, provided that suggestion addresses only mathematical errors in the staff recommendation, and a motion for reconsideration if the Commission made a mistake of fact or law in its order. 95 FPSC 5:144, In re: Application for a Rate Increase in Duval County by Ortega Utility Company; 94 FPSC 12:157, In re: Application for a Rate Increase by Florida Public Utilities Company.

has made. Indeed, in that very brief portion of the Motion where the Associations directly address the Commission's decision regarding a second interim rate filing, the Associations merely echo selected comments made at the Agenda Conference where the vote reflected in the Order was taken. As the court stated in Diamond Cab, a motion for reconsideration is not designed for re-argument, but to correct error. Redundancy is all that the Associations' Motion achieves as to the issue of a second interim filing. The remainder of the Motion is nothing more than a discursive diatribe of irrelevant and unsubstantiated observations.

WHEREFORE, in consideration of the foregoing, the Commission should strike the Associations' Motion for Reconsideration.

Respectfully submitted,


KENNETH A. HOFFMAN, ESQ.
WILLIAM B. WILLINGHAM, ESQ.
Rutledge, Ecenia, Underwood,
Purnell & Hoffman, P.A.
P. O. Box 551
Tallahassee, FL 32302-0551
(904) 681-6788

and

BRIAN P. ARMSTRONG, ESQ.
MATTHEW FEIL, ESQ.
Southern States Utilities, Inc.
1000 Color Place
Apopka, FL 32703
(407) 880-0058

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was furnished by U.S. Mail to the following this 9th day of November, 1995:

Lila Jaber, Esq.
Division of Legal Services
2540 Shumard Oak Boulevard
Gerald L. Gunter Building
Room 370
Tallahassee, FL 32399-0850

W. Allen Case, President
Sugarmill Woods Civic Assoc.
91 Cypress Boulevard West
Homosassa, FL 34446

Charles J. Beck, Esq.
Office of Public Counsel
111 W. Madison Street
Room 812
Tallahassee, FL 32314-5256

Kjell W. Pettersen
Chairman, MIFWRDFC
P.O. Box 712
Marco Island, FL 33969

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

Robert Bruce Snow
20 N. Main St.
Brooksville, FL 34601-2850

Donald R. Odom
Chief Asst. County Atty.
Hillsborough County
P.O. Box 1110
Tampa, FL 33601

Arthur I. Jacobs, Esq.
Jacobs & Peters
P.O. Box 1110
Fernandina Beach, FL
32305-1110



WILLIAM B. WILLINGHAM, ESQ.