

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

ORIGINAL
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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.)
_____)

Docket No. 950495-WS

Filed: December 11, 1995

SSU'S RESPONSE TO OPC'S MOTION TO CAP
SSU'S MAXIMUM INTERIM RATES

SOUTHERN STATES UTILITIES, INC., ("SSU") by and through its undersigned counsel, and pursuant to Rule 25-22.037(2)(b), Florida Administrative Code, hereby files this Response to the Motion to Cap SSU's Maximum Interim Rates ("Motion") filed by the Office of Public Counsel ("OPC") on December 4, 1995. In support of this Response, SSU states as follows:

1. SSU asserts that the instant Motion typifies OPC's duplicity and the deficient pleading practices which will undoubtedly continue as long as the Commission allows this type of practice without reproachment.

2. In the instant Motion, OPC yet again¹ moves that the Commission grant SSU interim rates no greater than those disseminated in a notice to SSU's customers. In so doing, OPC abjures the supplemental rate case notice it publicly endorsed.

¹ OPC filed a Motion to Cap SSU's Maximum Interim and Final Rates requesting the same relief on September 15, 1995. The Commission denied that motion by Order No. PSC-95-1327-FOF-WS, issued November 1, 1995.

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Further, OPC yet again fails to make a single cogent argument or citation to proper authority -- opting this time in favor of inexplicable wholesale references to prior OPC motions already denied -- and ignores both Commission precedent regarding intervenor participation in interim determinations and the mandate of Section 367.082(2)(a), Florida Statutes.

3. At the Commission's Agenda Conference on November 21, 1995, Mr. Shreve himself embraced, and even suggested changes to, the supplemental rate case notice OPC now complains of. It was clear from the draft supplemental notice attached to the staff recommendation which was discussed at the November 21 Agenda that said notice would contain only one column of proposed interim rates. Mr. Shreve recommended a change to the final rates columns -- the insertion of the word "potential" above the columns -- but recommended no change whatsoever to the proposed interim rates column. In addition, Mr. Shreve voiced no objection regarding the interim rates to be listed in the notice in response to Commissioner Garcia's direct question of whether the Commission had seen the last of OPC's complaints regarding the content of the rate case notices. What could the proposed interim rates listed in the notice logically be if not the interim rates SSU proposed in its filing? OPC's approval of the adequacy of the notice can only be considered approval in all respects, and OPC cannot now be heard to complain of the adequacy of the notice for reasons it has already waived.

4. For reasons not fully explained, OPC adopts the arguments made in its Second, Third, and Fourth Motions to Dismiss and its Motion for Reconsideration of the Order Establishing Procedure.² OPC asserts that all of these pleadings ("the incorporated motions"), "addressed inadequacies in the notices already provided by SSU." OPC's Motion, at p.1. Of course, OPC neglects to mention the fact that the incorporated motions have been denied.³ Moreover, OPC is simply arguing what it has argued previously but effectively stipulated it would not again. The Second Motion to Dismiss voiced complaints concerning SSU's explanation in its customer notices of the Commission's inclusion of the Polk, Hillsborough, and Hernando County service areas in the case. The Fourth Motion to Dismiss pertained to the impact of the Commission's decision in Docket No. 920199-WS (reflected in Order No. PSC-95-1262-FOF-WS, issued October 19, 1995) on the minimum filing requirements, not the notices. Curiously, OPC does not incorporate its September 15 Motion to Cap SSU's Maximum Interim and Final Rates ("First Motion to Cap Interim"), which is clearly the inspiration for the instant Motion. It seems, therefore, OPC does not know what it is arguing or why. OPC leaves such details

² The Commission already has disposed of OPC's motion for reconsideration of the Order Establishing Procedure. Rule 25-22.060 (1)(a), Florida Administrative Code, states that the Commission will not entertain a motion for reconsideration of an order disposing of a motion for reconsideration. OPC should not be allowed to sidestep this rule by "incorporating" arguments from a motion for reconsideration.

³ Order No. PSC-95-1453-FOF-WS, issued November 28, 1995, and Order No. PSC-95-1432-FOF-WS, issued November 27, 1995.

for SSU, staff, and the Commission to work out.

5. SSU asserts, as it has previously,⁴ that OPC does not have standing to participate in any Commission interim rates determination. There is no authority for a party to interject itself in an interim rate determination other than as authorized by Section 367.082(3), Florida Statutes.⁵ By Order No. PSC-95-1327-FOF-WS ("Order Denying Request for Interim Rate Relief"), the Commission confirmed as much and denied OPC's motion to dismiss SSU's request for interim rate relief. No party filed a timely motion for reconsideration directed to that portion of the Order Denying Interim Rate Relief. Thus, in accordance with Rule 25-22.060(1)(d), Florida Administrative Code, OPC has waived its right to challenge the Commission's determination that OPC lacks standing to seek dismissal or modification of an interim revenue request.

6. The incorporated motions referenced by OPC do not cite to any applicable law which would justify OPC's position.⁶ The instant Motion must be rejected on this basis. Most importantly, however, as argued in SSU's September 22 Response to OPC's First Motion to Cap SSU's Interim Rates, capping SSU's rates in the

⁴ SSU incorporates by reference the standing arguments it made in several prior pleadings, specifically SSU's September 6 Response to OPC's Motion to Dismiss Request for an Interim Increase in Rates and SSU's September 22 Response to OPC's First Motion to Cap Interim. See also Section 120.72(3), Florida Statutes, which exempts interim rate determinations from Chapter 120 requirements.

⁵ The instant Motion on its face has nothing to do with Section 367.082(3).

⁶ To the extent deemed necessary, SSU incorporates herein by reference its responses to OPC's incorporated motions.

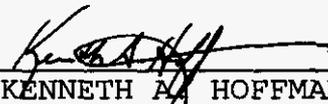
manner suggested would cause the Commission to violate Section 367.082(2)(a), Florida Statutes, which states in pertinent part:

In a proceeding for an interim increase, the commission **shall authorize . . .** the collection of rates sufficient to earn the minimum of the range of rate of return calculated in accordance with subparagraph (5)(b)2.

(Emphasis added.) For this reason alone, OPC's Motion must be denied as being contrary to the interim statute. In the interest of brevity, SSU hereby incorporates by reference its arguments in opposition to a cap on interim rates set forth in SSU's September 22 Response to OPC's First Motion to Cap Interim Rates.

WHEREFORE, in consideration of the foregoing, Southern States Utilities, Inc. requests that the Commission deny the Office of Public Counsel's Second Motion to Cap SSU's Maximum Interim Rates.

Respectfully submitted,



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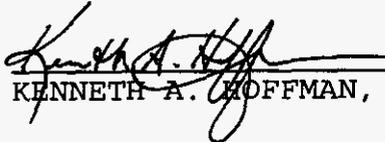
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