

950
a

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

December 26, 1995

ORIGINAL
FILE COPY

HAND DELIVERY

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

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:

1. Original and fifteen copies of SSU's Response in Opposition to OPC's Motion to Reestablish Official Filing Date;
2. Original and fifteen copies of Southern States Utilities, Inc.'s Objection to Interrogatory Request No. 334 from the Commission Staff's Sixth Set of Interrogatories and Motion for Protective Order; and
3. A disk in Word Perfect 6.0 containing a copy of the Response entitled "Res.Establish."

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,

Kenneth A. Hoffman
Kenneth A. Hoffman

ACK

AFA 3

APP

CAF

CMU

CTR

EAG

LEG 1

LIN 5

OPC

RCH

SEC 1

WAS Willis

OTH

KAH/rl
cc: All Parties of Record
Trib.3

RECEIVED & FILED
Mur
FPSC-BUREAU OF RECORDS

Response *Objection*

DOCUMENT NUMBER-DATE DOCUMENT NUMBER-DATE

13002 DEC 26 1995 13003 DEC 26 1995

FPSC-RECORDS/REPORTING FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

ORIGINAL FILE COPY

Docket No. 950495-WS

Filed: December 26, 1995

SSU'S RESPONSE IN OPPOSITION TO OPC'S MOTION TO REESTABLISH OFFICIAL FILING DATE

Southern States Utilities, Inc. ("SSU"), by and through its undersigned counsel, hereby files its Response in Opposition to the Office of Public Counsel's ("OPC") Motion to Reestablish Official Filing Date, and states as follows:

1. In its First Motion to Dismiss, OPC sought to reestablish the official date of filing ("ODF") of August 2, 1995 for SSU's Amended and Restated Application for Increased Water and Wastewater Rates ("Amended Application"). OPC's First Motion to Dismiss was denied.¹

2. Now OPC again seeks to change the ODF for SSU's Amended Application. OPC's (second) Motion to Reestablish Official Filing Date must be denied.

3. OPC lacks standing to seek reestablishment of the ODF. The plain language of Section 367.083, Florida Statutes, sets forth the procedures and criteria for establishing the ODF. Those

¹Order No. PSC-95-1352-FOF-WS issued November 1, 1995.

DOCUMENT NUMBER-DATE

13002 DEC 26 1995 4872

FPSC-RECORDS/REPORTING

procedures and criteria have been satisfied in this proceeding over the objection of OPC. More importantly, Section 367.083 reflects the Legislature's intent that the only party in interest to the ODF determination is the filing utility. The Legislature must have certainly foreseen the possibility of prospective parties to a rate case petitioning the Commission to withhold an ODF for the most frivolous of reasons and thereby indefinitely delaying a utility's right to earn a reasonable rate of return. To avoid such an unjust result of questionable constitutionality, the Legislature gave the Commission exclusive authority to enforce its MFR rules. By granting OPC's Motion, the Commission would effectively authorize any intervenor, including OPC, to enforce the Commission's MFR rules, a result clearly in direct contravention of the language and intent of Section 367.083. In consideration of the above, SSU asserts that OPC lacks standing to challenge the August 2, 1995 ODF and its Motion should therefore be stricken as an improper pleading, or, in the alternative denied.

4. Even if assuming arguendo that OPC has standing to challenge the ODF, OPC's challenge must fail. SSU's Amended Application requested, inter alia, interim revenue relief. SSU's request for interim revenue relief was denied. However, in denying the interim revenue relief, the Commission specifically authorized SSU to refile a petition for interim revenue relief and "advised (SSU) to consider the findings made herein as direction to the proper filing."²

²Order No. PSC-95-1327-FOF-WS issued November 1, 1995, at 5.

5. SSU responded to the Commission's authorization to refile a petition for interim revenue relief by filing a Supplemental Petition for Interim Revenue Relief on November 13, 1995. SSU's Supplemental Petition included additional data addressing the concerns expressed by the Commission concerning SSU's initial request for interim revenue relief, specifically, the use of a 1995 projected interim test year and the use of the existing uniform rates as a basis for interim revenue relief. Thus, SSU's Supplemental Petition provides all necessary data to support the following alternatives for revenue relief:

1994 Interim Period

Alternative 1: Modified Stand Alone (Capped) present rates and revenues with a stand alone percentage increase.

Alternative 2: Modified Stand Alone (Capped) present rates and revenues with uniform percentage revenue increase.

Alternative 3: Uniform Present Rates and Revenues with a uniform percentage revenue increase.

1995 Interim Period

Alternative 1: Modified Stand Alone (Capped) present rates and revenues with a stand alone percentage increase.

Alternative 2: Modified Stand Alone (Capped) present rates and revenues with a uniform percentage revenue increase.

Note: For 1995, SSU requested uniform present rates and revenues with a uniform percentage revenue increase as contained in Volume V of SSU's original MFRs.

1996 Final Period

Alternative 1: Modified Stand Alone (Capped) present rates and revenues with stand alone (no cap) final rates and revenues.

Alternative 2: Modified Stand Alone (Capped) present rates and revenues with modified stand alone (capped) final rates and revenues (\$52 water/\$65 wastewater).

Alternative 3: Modified Stand Alone (Capped) present rates and revenues with uniform final rates and revenues.

Note: For 1996, SSU requested uniform present rates and revenues with a uniform percentage revenue increase as shown in Volume V of SSU's original MFRs.

6. If the Commission had intended its authorization to refile a petition for interim revenue relief with additional data supporting rate increases under various rate structures to constitute a new ODF upon such filing by SSU, it certainly would have so stated in the November 1, 1995 Order Denying Interim Rate Relief. The Commission made no such finding. Nor did OPC raise the issue of a new ODF when it sought reconsideration of the Order Denying Interim Rate Relief. These facts support two conclusions. First, OPC has waived whatever rights it may have to seek a new ODF as a result of the actions taken by SSU in response to Order Denying Interim Rate Relief by failing to timely raise the ODF issue in its motion for reconsideration of that order. Second, it would be arbitrary and unjust for the Commission to penalize SSU for complying with the Commission's authorization to refile a petition for interim revenue relief with information addressing the issues raised in the Order Denying Interim Rate Relief by establishing a new ODF.

7. In OPC's First Motion to Dismiss, OPC stated its reason why the ODF is of significance to OPC:

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.³

OPC maintains that its point of entry is a function of the ODF. Here, OPC has vigorously participated in this proceeding from the time it exercised its clear point of entry by the filing of its Notice of Intervention on July 14, 1995. Second, as to the issue of SSU's interim revenue relief, OPC has no point of entry as confirmed by the Commission in its Order Denying Interim Rate Relief. SSU reminds the Commission that OPC's August 30, 1995 Motion to Dismiss SSU's Request for an Interim Increase in Rates was denied by the Commission as "an inappropriate motion" for that very reason.⁴ Certainly, if a motion to dismiss a request for interim revenue relief is an inappropriate venture into the interim rate process, so is OPC's Motion to Reestablish the ODF based on SSU's Supplemental Petition for Interim Revenue Relief.

8. Finally, it is not logical to suggest that the filing of supplemental information somehow renders the information previously filed incomplete. The Commission has acknowledged that the minimum filing requirements were met on August 2, 1995. There is no basis in law or rule which supports an argument that the

³OPC's First Motion to Dismiss filed August 29, 1995, at 5.

⁴Order No. PSC-95-1327-FOF-WS, at 8. SSU notes that despite the Commission's ruling on that issue, on December 4, 1995, OPC filed a motion to dismiss SSU's Supplemental Petition for Interim Revenue Relief and a motion to cap SSU's maximum interim rates requested pursuant to the Supplemental Petition.

filing of additional information, particularly rate design and other information requested by the Commission and the parties, is cause for the ODF to be changed in this proceeding. OPC's motion once again is procedural gamesmanship.

WHEREFORE, for the foregoing reasons, SSU respectfully requests that OPC's Motion to Reestablish Official Filing Date be denied.

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, Florida 32703
(407) 880-0058

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing SSU's Response in Opposition to OPC's Motion to Reestablish Official Filing Date was furnished by U. S. Mail to the following on this 26th day of December, 1995:

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

Charles J. Beck, Esq.
Office of Public Counsel
111 W. Madison Street
Room 812
Tallahassee, FL 32399-1400

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

Mr. Kjell Pettersen
P. O. Box 712
Marco Island, FL 33969

Mr. Morty Miller
President
Spring Hill Civic Asso., Inc.
P. O. Box 3092
Spring Hill, FL 34606

Mary E. Harlan, Esq.
Assistant County Attorney
Polk County
P. O. Box 60
Bartow, FL 33831

Mr. Paul Mauer, President
Harbour Woods Civic Association
11364 Woodsong Loop N
Jacksonville, FL 32225

Mr. W. Allen Case
President
Sugarmill Woods Civic Asso.
91 Cypress Blvd., West
Homosassa, FL 34446

Robert Bruce Snow, Esq.
20 N. Main Street
Room 462
Brooksville, FL 34601-2850

Donald Odom, Esq.
P. O. Box 1110
Tampa, FL 33601

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

Mr. Frank E. Kane
1208 E. Third Street
Lehigh Acres, FL 33936


KENNETH A. HOFEMAN, ESQ.