

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application for rate) DOCKET NO. 950495-WS
increase and increase in service) FILED: April 10, 1996
availability charges by Southern)
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.)

ORIGINAL
FILE COPY

REQUEST TO STRIKE TESTIMONY OF WITNESSES
WHO HAVE NOT PREFILED TESTIMONY

The Staff of the Florida Public Service Commission (Staff), by and through its undersigned counsel, hereby requests that the Prehearing Officer issue an order striking the proposed testimony of witnesses who have not prefiled testimony in this matter and in support thereof, states the following:

By the Order Establishing Procedure (Order No. PSC-95-1208-PCO-WS), issued September 29, 1995, the Commission required each party to prefile, in writing, all testimony that it intended to sponsor. This requirement was established pursuant to Rule 25-22.048(4)(a), Florida Administrative Code, which permits the Prehearing Officer to require parties to prefile testimony.

On March 26, 1996, parties and Staff filed their prehearing statements. Several parties indicated that they intend to call witnesses who have not prefiled testimony. Marco Island Civic Association, Inc., et al, listed the following witnesses who may be called to provide testimony by subpoena: Charles Dusseau (Florida Commerce Secretary), Virginia Wetherall (Florida Department of Environmental Protection Secretary), Karl Koch, (chief-of-staff to Lt. Gov. MacKay) The Harbour Woods Civic Association, Inc. (Harbor Woods) stated that it may also subpoena one or more employees of the Duval County Health Department in relation to the Beacon Hills' lead contamination issue. The Office of Public Counsel listed the following witnesses who may be called to provide testimony by subpoena: Jeff Sharkey, Tracy Smith, Dr. John Cirello, Karla Olson Teasley, Esq., Brian Armstrong, Esq., Ida Roberts, Esq., Stephanie Smith, and Charles Sweat. Southern States Utilities, Inc., listed

DOCUMENT NUMBER-DATE
04169 APR 10 8013
FPSC-RECORDS/REPORTING

STAFF'S REQUEST TO STRIKE
DOCKET NO. 950495-WS
PAGE 2

John Sowerby and David York as witnesses who will testify by subpoena.

The prefiled testimony requirement gives parties and Staff adequate notice as to the subject matter of the testimony, permits discovery regarding the testimony, and aids in the preparation of other testimony. The number of witnesses is known, thereby allowing the Commission to schedule an appropriate amount of hearing dates, and permitting the coordination of the presentation of witnesses at the hearing. Prefiled testimony also assists the Commissioners and Staff in their preparation for the hearing.

By listing witnesses may be called to testify but who have not prefiled testimony, the parties have essentially disrupted this process. Adequate notice has not been given as to the subject matter of the testimony, nor has any indication been made as to its length and purpose. The number of witnesses who may provide live testimony (at least 13 have been listed) raises particular concern given the length of the hearing and the possible need to schedule additional hearing dates. While several of the witnesses have been deposed in this matter, the presentation of witnesses without notice of the subject of their testimony unfairly prejudices parties and Staff and precludes meaningful discovery.

Further, the parties have not requested leave from the Commission to depart from the requirements of Rule 25-22.048(4) (a) and Order No. PSC-95-1208-PCO-WS. That order specifically required parties to prefile testimony. Order No. PSC-94-1013-PCO-WS, issued August 23, 1994 in Docket No. 921261-WS (Harbor Utilities Company, Inc.), addressed a Staff objection to the utility's listing of witnesses who had not prefiled testimony. The order found that the utility had not demonstrated that the witnesses were truly adverse. The prehearing officer ordered the utility to prefile testimony of those witnesses, and if that could not be accomplished, to take the witnesses' deposition and file it as testimony. In Docket No. 921237-WS (JJ's Mobile Homes, Inc.) the Commission ordered the Office of Public Counsel to file testimony or depositions of witnesses that it had originally contended were adverse. OPC later claimed that it could not provide prefiled testimony and was permitted, by Order No. PSC-95-0509-PCO-WS, issued April 26, 1995, to present the witnesses testimony live at hearing. The utility was permitted to present live rebuttal testimony.

These orders demonstrate that scrutiny must be given to a party's intention to present testimony at hearing without having prefiled testimony for a particular witness. Therefore, Staff believes that the witnesses should not be listed in the prehearing order or presented at hearing.

STAFF'S REQUEST TO STRIKE
DOCKET NO. 950495-WS
PAGE 3

WHEREFORE, the Staff of the Florida Public Service Commission requests that the Prehearing Officer issue an order striking from the prehearing order the witnesses who have not prefiled testimony.

Respectfully submitted, this
10th day of April, 1996.



Margaret E. O'Sullivan
Staff Counsel
FLORIDA PUBLIC SERVICE COMMISSION
2540 Shumard Oak Boulevard
Gunter Building - Room 370
Tallahassee, Florida 32399-0850
(904) 413-6226

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application for rate) DOCKET NO. 950495-WS
increase and increase in service) FILED: April 10, 1996
availability charges by Southern)
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.)
_____)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of Staff's Request to Strike Testimony of Witnesses Who Have Not Prefiled Testimony has been furnished by U.S. Mail and facsimile, and hand delivery, where indicated, to the individuals listed below.

Brian P. Armstrong, Esq.
Matthew Feil, Esq.
Southern States Utilities, Inc.
1000 Color Place
Apopka, FL 32703

** Kenneth Hoffman, Esquire
Rutledge, Ecenia, Underwood, Purnell & Hoffman
Post Office Box 551
Tallahassee, Florida 32302-0551

** Michael B. Twomey
Route 28, Box 1264
Tallahassee, Florida 32310


** Charles J. Beck, Esq.
Office of Public Counsel
c/o The Florida Legislature
111 W. Madison Street
Suite 812
Tallahassee, Florida 32399-1400

** Hand delivery

CERTIFICATE OF SERVICE
DOCKET NO. 950495-WS
PAGE TWO

Arthur I. Jacobs, Esq.
Post Office Box 1110
Fernandina Beach, Florida 32035-1110

Larry Haag
Citrus County Attorney's Office
111 W. Main Street
Second Floor, Suite B
Inverness, Florida 34450



Margaret E. O'Sullivan
Staff Counsel
FLORIDA PUBLIC SERVICE COMMISSION
2540 Shumard Oak Boulevard
Gunter Building - Room 370
Tallahassee, Florida 32399-0850
(904) 413-6226