

2. In the meantime, on November 14, Citrus County timely filed a Motion for Reconsideration of the Final Order with the Commission. On the same date, Citrus County filed a Motion with the First District Court of Appeal asking the court "to temporarily relinquish jurisdiction of the case to the Florida Public Service Commission (for the) limited purpose of allowing it to hear motions for reconsideration of the Final Order published on October 30, 1996, but which order was appealed to this Court by Southern States Utilities, Inc. ("SSU") two days later on November 1, 1996."¹

3. On November 26, Florida Water timely filed a Cross-Motion for Reconsideration of the Final Order with the Commission.

4. On December 2, the Court issued an order granting Citrus County's Motion to Relinquish Jurisdiction. The Court ruled:

[T]his appeal is abated pending disposition of the movants' pending motions for reconsideration by the lower tribunal. Time for filing notices of cross-appeal, briefs, and other matters pursuant to the rules of appellate procedure is tolled during the period of abatement.

See December 2, 1996 order in First DCA Case No. 96-04227 attached hereto as Exhibit A.

5. On December 3, Florida Water filed a Motion for Clarification of the December 2 order requesting that the court clarify and confirm that the abatement of the appeal remain in effect pending disposition of both Citrus County's Motion for Reconsideration and Florida Water's Cross-Motion for

¹See Citrus County Motion to Relinquish Jurisdiction filed in First DCA Case No. 96-04227, at 1 (emphasis supplied).

Reconsideration.

6. On December 4, OPC filed a Motion for Reconsideration and Clarification of the December 2 order asking the court to enter an order authorizing OPC to file a motion for reconsideration with the Commission well beyond the 15 day period (following the date of issuance of the Final Order) set forth in Rule 25-22.060(3)(a), Florida Administrative Code.

7. On December 31, the court issued an order amending the December 2 order to reflect that:

... the appeal is abated pending the lower tribunal's disposition of all motions or cross-motions for reconsideration of the order for which review is sought in this proceeding. The determination of the timeliness or propriety of any such motion or cross-motion shall be made by the lower tribunal.

See December 31, 1996 order issued in First DCA Case No. 96-04227 attached hereto as Exhibit B.

8. Having failed to secure an order from the First DCA authorizing an untimely motion for reconsideration, OPC filed its instant motion asking the Commission to establish a schedule for the filing (and/or readopting a previously filed) of an untimely motion for reconsideration.

B. ARGUMENT

9. OPC's Motion should be denied. OPC asks the Commission to order what the First DCA refused to order, that is, authorization to file an untimely motion for reconsideration. The Commission should deny OPC's request.

10. In the December 2, 1996 order abating the appeal, the

court did in fact toll the time for filing notices of cross-appeal, briefs and other matters pursuant to the Rules of Appellate Procedure. The court specifically excluded from the December 2 order any tolling of the time for filing a motion for reconsideration under Commission Rule 25-22.060(3), Florida Administrative Code.


11. The time parameters attached to a motion for reconsideration under Commission rules are **jurisdictional** and may not be extended by the Commission. In Citizens of the State of Florida v. North Fort Myers Utility, Inc., First DCA Case No. 95-1439, OPC requested and was granted an extension of time to file a motion for reconsideration by the Prehearing Officer and subsequently filed an appeal of two Commission orders with the First District Court of Appeal. The court, on its own motion, required OPC to show cause why the appeal should not be dismissed as untimely filed in view of the decision in City of Hollywood v. Public Employees Relations Commission, 432 So.2d 79, 81-82 (Fla. 4th DCA 1983) (holding "that PERC does not have authority to grant an extension of time to file a motion for reconsideration of an order so as to suspend rendition of said order."). The court ultimately determined that OPC's appeal was untimely and should be dismissed for lack of jurisdiction. See Orders dated October 19, 1995 and November 16, 1995 issued in Citizens of the State of Florida v. North Fort Myers Utility, Inc., attached hereto as Composite Exhibit C.

12. OPC asserts that its failure to timely file a motion for

12. OPC asserts that its failure to timely file a motion for reconsideration should be legally excused because the Commission had no jurisdiction to consider any motions for reconsideration until the December 2 order. Under OPC's theory, OPC's Notice of Cross-Appeal of the Final Order filed on November 26th with the Commission must be dismissed on the ground that the Commission lacked jurisdiction. OPC's inconsistent positions undermine the credibility of its argument. Having failed to timely file a motion for reconsideration, and having failed to secure authority from the First DCA to file an untimely motion for reconsideration, the Prehearing Officer should deny OPC's Motion to Establish a Schedule for Filing (Untimely) Motions for Reconsideration.

WHEREFORE, for the foregoing reasons, Florida Water respectfully requests that the Prehearing Officer enter an order denying OPC's Motion to Establish Schedule for Filing Motions for Reconsideration.

Respectfully submitted,



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and

BRIAN P. ARMSTRONG, ESQ.
MATTHEW FEIL, ESQ.
Florida Water Services Corporation
1000 Color Place
Apopka, Florida 32703
(407) 880-0058

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of Florida Water Services Corporation's Response in Opposition to OPC's Motion to Establish Schedule for Filing Motions for Reconsideration was furnished by U. S. Mail to the following on this 16th day of January, 1997:

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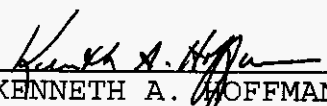
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KENNETH A. HOFFMAN, ESQ.

file

DISTRICT COURT OF APPEAL, FIRST DISTRICT

Tallahassee, Florida 32399-1850

Telephone (904) 488-6151

DATE: October 19, 1995

CASE NO.: 95-1439

RECEIVED

OCT 20 1995

Rose, Sundstrom
& Bentley

CITIZENS OF THE STATE OF
FLORIDA

vs.

NORTH FORT MYERS UTILITY,
INC. and THE FLORIDA PUBLIC
SERVICE COMMISSION

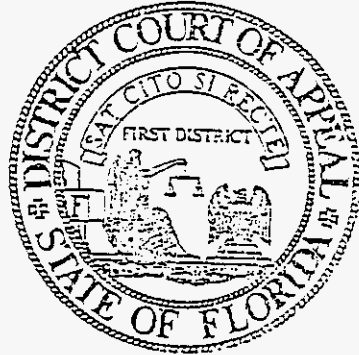
Appellant.

Appellees.

BY ORDER OF THE COURT:

Upon review of the file in this case, it appears to the court that the Appellants' motion for reconsideration of the final order of the Florida Public Service Commission issued on December 13, 1994, was not timely filed within fifteen (15) days after issuance of that order as required by Fla. Admin. Code R. 25-22.060(3)(a). Appellants are therefore ordered to show cause, within seven (7) days from the date of this order, why the appeal of the final orders of the Florida Public Service Commission issued on December 13, 1994, and March 27, 1995, should not be dismissed for lack of jurisdiction. See City of Hollywood v. Public Employees Relations Comm'n, 432 So. 2d 79 (Fla. 4th DCA 1983); Fla. R. App. P. 9.020(g). Appellees responses shall be filed within seven (7) days thereafter.

I HEREBY CERTIFY that the foregoing is a true copy of the original court order.



Jon S. Wheeler
JON S. WHEELER, CLERK

By: *Judith Sheen*
Deputy Clerk

ccpies:

Stephen C. Reilly
Margaret O'Sullivan
Robert Vandiver

Martin S. Friedman
Diana W. Caldwell

RECORDED

DISTRICT COURT OF APPEAL, FIRST DISTRICT NOV 17 PM 2:43

Tallahassee, Florida 32399-1850

Telephone (904) 488-6151

DATE: November 16, 1995

LT# 930373-SU

CASE NO.: 95-1439

CITIZENS OF THE STATE OF FLORIDA vs.

NORTH FORT MYERS UTILITY, INC. and THE FLORIDA PUBLIC SERVICE COMMISSION

Appellant.

Appellees.

BY ORDER OF THE COURT:

The court has reviewed appellant's and appellees' responses to the court's order to show cause why the appeal should not be dismissed for lack of jurisdiction. Having reviewed the parties' responses, and appellant not having shown good cause, the appeal is hereby dismissed.

I HEREBY CERTIFY that the foregoing is a true copy of the original court order.



Jon S. Wheeler
JON S. WHEELER, CLERK

By: *[Signature]*
Deputy Clerk

Copies:
Stephen C. Reilly
Margaret O'Sullivan
Robert Vandiver

Martin S. Friedman
Diana W. Caldwell
Blanca Bayo