

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for rate increase and increase in service 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.

DOCKET NO. 950495-WS  
ORDER NO. PSC-97-0692-FOF-WS  
ISSUED: June 11, 1997

The following Commissioners participated in the disposition of this matter:

JULIA L. JOHNSON, Chairman  
SUSAN F. CLARK  
J. TERRY DEASON  
JOE GARCIA  
DIANE K. KIESLING

ORDER DENYING PETITION TO INTERVENE,  
PETITION TO LEVY FINE, AND  
PETITION TO ESTABLISH WASTEWATER RATES

BY THE COMMISSION:

BACKGROUND

Southern States Utilities, Inc., is a Class A utility, which provides water and wastewater service to 152 service areas in 25 counties. By Order No. PSC-97-0427-FOF-WS, issued April 16, 1997, in Docket No. 970028-WS, we acknowledged the utility's January 2, 1997, change in name to Florida Water Services Corporation. This Order will refer to the utility as "SSU", "Florida Water" or "the utility" where appropriate.

On June 28, 1995, SSU filed an application for approval of uniform interim and final water and wastewater rate increases for 141 service areas in 22 counties, pursuant to Sections 367.081 and

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367.082, Florida Statutes, respectively. The utility also requested a uniform increase in service availability charges, approval of an allowance for funds used during construction (AFUDC) and an allowance for funds prudently invested (AFPI). August 2, 1995, was established as the official date of filing. SSU filed its supplemental petition for interim revenue relief on November 13, 1995, which we granted by Order No. PSC-96-0125-FOF-WS, issued January 25, 1996.

This Commission held 24 customer service hearings throughout the state during the pendency of this rate proceeding, and a ten-day technical hearing from April 29 through May 10, 1996. We also held an additional day of hearing on May 31, 1996, to consider rate case expense. By Order No. PSC-96-1320-FOF-WS, issued October 30, 1996, (Final Order) we set forth the final determination as to SSU's rates and charges, and all other matters raised during the proceedings.

On November 1, 1996, SSU filed a notice indicating its appeal of the Final Order to the First District Court of Appeal (the Court). On November 14, 1996, the group of homeowners associations known as Marco, et al. filed a motion for reconsideration of the Final Order with this Commission, and a motion with the Court to remand jurisdiction back to this Commission. SSU filed a cross-motion for reconsideration on November 26, 1996. On December 31, 1996, the Court issued an order amending a prior order to indicate that the appeal was abated pending the disposition of all motions or cross-motions for reconsideration. On January 17, 1997, the Office of Public Counsel (OPC) filed a motion for reconsideration of the Final Order. By Order No. PSC-97-0190-PCO-WS, issued April 7, 1997, we ruled upon the motions for reconsideration.

As noted in the Final Order, the utility provides residential wastewater only (RWO) service in nine service areas. Because Florida Water does not supply water to these nine service areas and has no water usage data on which to base a metered wastewater rate, the utility charges its RWO customers a flat rate. Tropical Isles is the only one of these nine service areas that is metered for water service, which is provided by the Ft. Pierce Utilities Authority (Ft. Pierce). During a customer hearing in this docket, customers of Tropical Isles questioned the validity of flat wastewater rates when they have metered water rates. Further, customers questioned why a vacation rate could not be established for the months they are not in residence in Florida.

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In the Final Order, we required the utility to investigate the feasibility of obtaining water meter consumption data for the Tropical Isles service area and to explore the feasibility of a vacation rate for Tropical Isles. We directed the utility to file a report of the results of the investigation within 20 days, and notify the customers in the service area that the matter was being investigated further. The order provided that a docket would then be initiated to address this issue. (Final Order, p. 238-240).

The utility submitted the report required by the order with our Staff counsel on February 28, 1997, but did not timely file the report with the Division of Records and Reporting. According to this report, the utility was unable to obtain information on water consumption of the Tropical Isles customers from Ft. Pierce in order to calculate metered wastewater rates. In the report, Florida Water stated that it would make further attempts to obtain the pertinent information and report back in another 120 days.

Consistent with the Final Order, on April 1, 1997, our Staff opened Docket No. 970409-SU to address the report filed by the utility and the issues of a metered wastewater rate and/or vacation rate for Tropical Isles. On April 10, 1997, the utility filed a supplement to its initial letter, indicating further discussion with Ft. Pierce regarding the consumption data.

#### PETITION FOR INTERVENTION

On March 24, 1997, the Tropical Isles Homeowners Association (TIHA) filed a Petition for Intervention in this docket. TIHA asserted that it is entitled to intervene in these proceedings because its members are the intended beneficiaries of the requirements placed upon SSU in the Final Order regarding water consumption data and the potential adjustment of the RWO rate for the Tropical Isles service area. The intervention petition further alleged that TIHA's members are substantially interested in that the accuracy of the members' recurring monthly wastewater bills would be affected by the utility's compliance or noncompliance with the requirements of the Final Order.

Florida Water's April 7, 1997, response to TIHA's petition for intervention asserted that TIHA failed to timely seek intervention in this docket, pursuant to Rule 25-22.039, Florida Administrative Code. The utility also noted that the Final Order provided for the initiation of a separate docket to address the RWO rates at issue

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for the Tropical Isles customers, and that TIHA may exercise its right to seek intervention in that docket.

By its December 31, 1996, order, the Court abated the appellate proceedings "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." While this Commission had authority to consider and rule upon motions for reconsideration and our own reconsideration of the Final Order, the Court's order did not contemplate the consideration of other motions such as the ones filed by TIHA. Therefore, on this point alone, TIHA's petition for intervention in this matter is dismissed.

We note that even without the limitation imposed by the Court, TIHA's motion would fail. Rule 25-22.039, Florida Administrative Code, is clear: persons, other than the original parties to a pending proceeding, who have a substantial interest in the proceeding, and who desire to become parties may petition the presiding officer for leave to intervene; but such petition for leave to intervene must be filed at least 5 days before the final hearing. TIHA filed its petition for intervention on March 24, 1997, approximately nine months after the final hearing concluded. Pursuant to Rule 25-22.039, Florida Administrative Code, the petitioner's request for intervention is untimely and in contravention to applicable law. See City of Plant City v. Mayo, 337 So.2d 966 (Fla. 1976).

This matter was raised and addressed during the course of the hearing. TIHA's members received all of the notices sent in the instant docket and were afforded all opportunities to participate in the proceeding. In fact, the customers of Tropical Isles testified at a customer meeting regarding this matter, RWO rates were an issue in the proceeding, and our Staff cross-examined utility witnesses regarding Tropical Isles' consumption data.

Because of the limited scope of the Court's abatement of the appeal in this docket, and consistent with Rule 25-22.039, Florida Administrative Code, and the reasons outlined herein, TIHA's petition for intervention is hereby dismissed.

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TIHA'S PETITIONS TO LEVY A FINE  
AND ESTABLISH WASTEWATER RATES AND  
OFFER TO TAKE OVER FACILITIES

On March 24, 1997, TIHA also filed a Petition to Levy Fine for Failure to Comply with Commission Order, Petition to Establish Wastewater Rates Based Upon Water Consumption Data, and Offer to Take Over Facilities. In its petition, TIHA (1) argued that the utility should be fined for failing to comply with the requirements of the Final Order with respect to filing its report and the feasibility of initiating metered wastewater rates for the Tropical Isles service area; (2) requested that we establish new wastewater rates based on consumption, with a refund calculated from the date that interim rates were established; and (3) stated that the former owner of the system offered to purchase the system back from the utility.

According to Rule 9.600(b), Florida Rules of Appellate Procedure, if jurisdiction has been divested by an appeal, the appellate court may permit the lower tribunal to address "specifically stated matters." Decisions of lower tribunals which exceed the authorized scope of the appellate court's directive are invalid. Palma Sola Harbour Condominium, Inc. v. Huber, 374 So.2d 1135 (Fla. 2nd DCA, 1979). See also Bailey v. Bailey, 392 So.2d 49 (Fla 3rd DCA, 1981).

As we have acknowledged herein, the Court abated the appeal of the Final Order for the limited purpose of reconsideration. Therefore, neither TIHA's petition to intervene nor substantive motions can be considered in this docket. Moreover, we have dismissed TIHA's petition to intervene. Even if the merits of the petition for intervention could be considered, TIHA's petition was untimely. To the extent that the petitions address the decision already made and set forth in the Final Order, the time for filing for reconsideration of the Final Order has long passed. See Rule 25-22.060(3), Florida Administrative Code.

Moreover, in accordance with the requirements of the Final Order, Docket No. 970409-SU has been opened for the initiation of a limited proceeding to restructure wastewater rates for the Tropical Isles Service area. This new docket provides TIHA a point of entry to voice its concerns with the information provided by Florida Water.

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For all of the foregoing reasons, the petitions filed by TIHA are hereby dismissed. The offer to take over the facilities requires no action, as the offer does not request relief from this Commission, but only states a proposal made by the facility's former owner.

For informational purposes, we reviewed the substance of TIHA's petition. We note that several of the concerns raised in the petition, such as the establishment of a new rate structure and the sufficiency of SSU's report, may be addressed in the new docket. As to TIHA's allegation that its members are entitled to an interim refund based upon the requested water consumption rates compared to the flat rates approved in the Final Order, we note that the Final Order specifically addresses this issue.

The Final Order approved interim revenues for Tropical Isles of \$99,793. (Final Order, p. 1160) To determine if an interim refund was required, a revised revenue requirement was calculated for the 1996 interim period using the same data used to establish final rates. (Final Order, p. 244) The revised revenue requirement for this interim period was \$115,615. (Final Order, p. 1160) Because the revised interim revenue requirement was greater than the interim revenue requirement, no interim refund was required for the Tropical Isles service area. Further, the Final Order, at page 245, indicates, "that even though individual final rates may be less than interim rates due to rate structure changes, no interim refund is warranted unless the newly authorized final rate of return exceeds the rate authorized on an interim basis." Therefore, even if we could consider this point, based upon our decision on interim refunds in the Final Order, no refund would be required to the Tropical Isles service area.

#### FLORIDA WATER'S MOTION TO DISMISS TIHA'S PETITIONS

In its April 7, 1997, response to TIHA's petition, Florida Water moved to dismiss TIHA's motions on the grounds that TIHA's petition for intervention must be dismissed as untimely. In response to Florida Water's motion to dismiss, TIHA raised further argument regarding the proper filing of the report and the effective point of entry into the proceedings. Because we have dismissed TIHA's petition to intervene and petitions regarding the report and rate structure, it is not necessary to rule upon Florida Water's motion to dismiss.

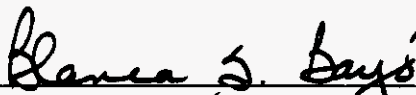
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Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the petition for intervention in this docket filed by the Tropical Isles Homeowners Association is dismissed. It is further

ORDERED that the Petition to Levy Fine for Failure to Comply with Commission Order and Petition to Establish Wastewater Rates Based Upon Water Consumption Data, filed by the Tropical Isles Homeowners Association is dismissed.

By ORDER of the Florida Public Service Commission, this 11th day of June, 1997.

  
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BLANCA S. BAYÓ, Director  
Division of Records and Reporting

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code, if issued by a Prehearing Officer; (2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or (3) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of Records and Reporting, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.