

FLORIDA PUBLIC SERVICE COMMISSION
Capital Circle Office Center • 2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

M E M O R A N D U M

FEBRUARY 29, 1996

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYO)

FROM: DIVISION OF LEGAL SERVICES (CAPELESS) *PSC*
DIVISION OF WATER & WASTEWATER (WILLIS) *MW*

RE: DOCKET NO. 950495-WS - 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

AGENDA: MARCH 6, 1996 - REGULAR AGENDA - DECISION PRIOR TO HEARING - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: I:\PSC\LEG\WP\SSUREC04.RCM

CASE BACKGROUND

Southern States Utilities, Inc. (SSU or utility) is a Class A utility which provides water and wastewater service to service areas in 25 counties. On June 28, 1995, SSU filed an application with the Commission requesting increased water and wastewater rates for 141 services areas, pursuant to Section 367.081, Florida Statutes. SSU also requested an increase in service availability charges, pursuant to Section 367.101, Florida Statutes, an allowance for funds used during construction (AFUDC), and an allowance for funds prudently invested.

On July 26, 1995, the Commission acknowledged the intervention of the Office of the Public Counsel (OPC) by Order No. PSC-95-0901-PCO-WS. The Commission granted intervention to: the Sugarmill Woods Civic Association, Inc., (Sugarmill Woods) and the Spring Hill Civic Association, Inc., (Spring Hill) by Order No. PSC-95-1034-WS, issued August 21, 1995; the Marco Island Civic Association, Inc., (Marco Island) by Order No. PSC-95-1143-WS, issued September 14, 1995; the Concerned Citizens of Lehigh Acres

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DOCKET NO. 950495-WS
DATE: FEBRUARY 29, 1996

by Order No. 96-PSC-0089-PCO-WS, issued January 17, 1996; and the Harbor Woods Civic Association, Inc., by Order No. 96-PSC-0090-WS, also issued January 17, 1996.

On January 31, 1996, the Board of Supervisors of the East County Water Control District (Board), filed a petition for leave to intervene in this proceeding, together with a copy of its resolution declaring that the East County Water Control District (District) intervenes in this proceeding on behalf of its taxpayers. A copy of the petition and resolution is attached to this recommendation as Composite Exhibit A. An earlier recommendation on this petition was filed for the February 20, 1996, agenda conference. However, at that agenda conference, counsel for SSU requested deferral of this item because SSU had not received a copy of the petition or resolution, despite that it is named on the certificate of service. In order to give SSU an opportunity to file a response, the Chairman deferred ruling on the petition until the March 5, 1996, agenda conference. On September 27, 1996, SSU filed a response to the petition. No other party to this docket has filed a response, and pursuant to Rule 25-22.037, Florida Administrative Code, the response time has run. This recommendation addresses the Board's petition for leave to intervene and SSU's response thereto.

DOCKET NO. 950495-WS
DATE: FEBRUARY 29, 1996

DISCUSSION OF ISSUES

ISSUE 1: Should the petition of the Board of Supervisors of the East County Water Control District (Board) for leave to intervene be granted?

RECOMMENDATION: Yes, the Board's petition for leave to intervene should be granted to the extent that it requests permission to intervene itself as a customer of SSU. However, the Board should not be permitted to intervene on behalf of all of the taxpayers or ratepayers of the East County Water Control District (District). Moreover, the requests that parties be directed to serve the District with all previously filed documents and that all documents be served upon the District's vice-president, in addition to the Board's counsel of record, should be denied. (CAPELESS)

STAFF ANALYSIS: By petition filed January 31, 1996, by and through its counsel, Michael B. Twomey, Esq., the Board requests leave to intervene and permission to participate in this proceeding with full rights as a party. In support of its petition, the Board states that the District is a drainage district within the meaning of Chapter 298, Florida Statutes, and is a water and wastewater customer of SSU in Lee County, Florida. The Board states that because SSU has requested increased water and wastewater rates, the District's substantial interests will be determined by this proceeding, as defined by Section 120.52(12), Florida Statutes, and that the District is per se entitled to status as a party in this proceeding.

The Board attached to its petition a copy of its resolution dated January 18, 1996. A copy of the petition and resolution is attached to this recommendation as Composite Exhibit A. In the resolution, the Board declares that the District intervenes in this proceeding against the proposed rates "on behalf of its taxpayers and rate payers of increasing water and sewer charges." The Board also states in the resolution that SSU provides wastewater service to 7%, and water service to 14%, of the District's land; that the District has a substantial interest in the operation of SSU through its "plans of reclamation" by recharging the aquifer and providing a sewer drainage system, and that the taxes collected by the District should be considered in this proceeding.

In addition, the Board also requests that the Order Granting Intervention: 1) direct SSU to immediately serve the District with a full and complete copy of its petition, testimony, and all supporting documentation filed with the Commission, its staff, and other parties; 2) direct Commission staff and other parties to this case to serve upon the District copies of all documents either

DOCKET NO. 950495-WS
DATE: FEBRUARY 29, 1996

filed with the Commission or served upon other parties up to, and including, the date of the Order Granting Intervention; and 3) direct the parties to this docket to serve all documents relating to this proceeding upon the vice-president of the District, as well as upon counsel for the Board.

As stated in the case background, an earlier recommendation on this petition was filed for the February 20, 1996, agenda conference. However, at that agenda conference, counsel for SSU requested deferral of this item because SSU had not received a copy of the petition or resolution, despite that it is named on the certificate of service. In order to give SSU an opportunity to file a response, the Chairman deferred ruling on the petition until the March 5, 1996, agenda conference. On September 27, 1996, SSU filed a response to the petition. No other party to this docket has filed a response, and pursuant to Rule 25-22.037, Florida Administrative Code, the response time has run.

In its response, SSU states that it does not object to the petition provided the Board's participation in this proceeding is limited to its status and standing as a customer of SSU. However, SSU objects to the participation of the Board in this proceeding as a representative of the taxpayers who reside in the District. SSU states that there is no authority cited in the petition which would support such standing, and that there is nothing in Chapter 298, Florida Statutes, which authorizes the District to participate in an administrative proceeding on behalf of its taxpayers. SSU cites to Roach v. Loxahatchee Groves Water Control Dist., 417 So. 2d 814, 816 (Fla. 4th DCA 1982), for the proposition that it is well settled that a Chapter 298 drainage district has "only those powers which the Legislature has delegated by statute." Therefore, SSU argues that the resolution attached to the petition does not confer standing on the Board to represent its taxpayers in this proceeding.

Moreover, SSU notes that it appears from the petition that the taxpayers within the District who are customers of SSU receive service in the Lehigh service area, and that such customers already are represented in this proceeding through the intervention of OPC and the Concerned Citizens of Lehigh Acres.

Further, SSU argues that the Board's request that SSU immediately serve the District with a full and complete copy of its petition, testimony and all supporting documentation filed with the Commission, the Commission staff, and other parties should be denied. According to SSU, intervenors take this proceeding as they find it under Rule 25-22.039, Florida Administrative Code, and the

DOCKET NO. 950495-WS
DATE: FEBRUARY 29, 1996

denial of this request would be consistent with prior orders concerning petitions for leave to intervene in this proceeding.

Staff initially notes that the Board apparently uses the terms "Board" and "District" interchangeably in the petition. However, nowhere in the petition does the Board expressly request permission to intervene on behalf of the taxpayers of the District. The petition is therefore unclear as to whether the Board requests leave to intervene as a customer itself, or whether it requests leave to intervene on behalf of the entire District. In the resolution, the Board declares that the District intervenes in this proceeding "on behalf of its taxpayers and rate payers of increasing water and sewer charges." As noted by SSU in its response, however, there is no authority cited in the petition to support the standing of the Board to intervene on behalf of the taxpayers in the District.

As a Chapter 298 drainage or water control district, the Board has certain specific powers "to effect the drainage, protection, and reclamation of the land in the [D]istrict subject to tax," as specified in Section 298.22, Florida Statutes. In providing for the organization of drainage or water control districts, the Legislature "conferred certain limited powers on these statutory creatures for the purpose of reclaiming and draining swamps and overflowed lands." Roach v. Loxahatchee Groves Water Control Dist., 417 So. 2d at 816. And as noted by SSU in its response to the petition to intervene, "[t]he law is well-settled that drainage districts have only those powers which the Legislature has delegated by statute." Id. Also as noted by SSU, Chapter 298, Florida Statutes, does not authorize a drainage district board of supervisors to participate as a party in administrative proceedings on behalf of its taxpayers.

Moreover, Chapter 120, Florida Statutes, does not authorize a drainage district board of supervisors to participate as a party in administrative proceedings on behalf of its taxpayers. Section 120(12)(d), Florida Statutes, grants such authority only to certain county representatives "to represent the interests of the consumers of a county, when the proceeding involves the substantial interests of a significant number of residents of the county and the board of county commissioners has, by resolution, authorized the [representation]".

Staff recommends that the Board's petition for leave to intervene should be granted to the extent that it requests permission to intervene itself as a customer of SSU. Pursuant to Subsection 120.52(12)(b), Florida Statutes, any person whose substantial interests will be affected by agency action may

DOCKET NO. 950495-WS
DATE: FEBRUARY 29, 1996

participate as a party in Chapter 120 proceedings. Subsection 120.52(13), Florida Statutes, defines "person" to be, in relevant part, any agency described in Subsection 120.52(1), Florida Statutes. Subsection 120.52(1)(b), Florida Statutes, provides that "agency" means, among other things, Chapter 298 drainage districts. Therefore, the Board is a "person" within the meaning of Chapter 120, Florida Statutes. And as a water and wastewater customer of SSU, the Board's substantial interests may be affected by this proceeding. However, for the foregoing reasons, the Board should not be permitted to intervene on behalf of all of the taxpayers or ratepayers of the District. Nevertheless, as noted by SSU, to the extent that those taxpayers reside in the Lehigh service area, they are already represented in this proceeding through the intervention of OPC and the Concerned Citizens of Lehigh Acres.

Further, as noted by SSU, pursuant to Rule 25-22.039, Florida Administrative Code, the Board takes the case as it finds it. For this reason, staff recommends that the Board's request that parties be directed to serve the District with all previously filed documents should be denied. The Board may inspect all documents on file at the Division of Records and Reporting and may either make copies or obtain documents through discovery. Moreover, staff recommends that the Board's request that all documents be served upon the vice-president of the District, in addition to the Board's counsel of record, should also be denied. Parties should only be required to serve documents on the Board's counsel of record.

DOCKET NO. 950495-WS
DATE: FEBRUARY 29, 1996

ISSUE 2: Should this docket be closed?

RECOMMENDATION: No, this docket should remain open in order to process the utility's application. (CAPELESS)

STAFF ANALYSIS: This docket should remain open in order to process the utility's application.

ORIGINAL
FILE COPY

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

Application for rate increase 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, by Southern States
Utilities, Inc.

DOCKET NO. 950495-WS
FILED: January 26, 1996
Sj

PETITION OF BOARD OF SUPERVISORS OF THE EAST
COUNTY WATER CONTROL DISTRICT FOR LEAVE TO INTERVENE

The Board of Supervisors of the East County Water Control District, by and through its undersigned attorney, pursuant to Section 120.53, Florida Statutes, and Rules 25-22.036(7)(a) and 25-22.039, Florida Administrative Code, petitions for leave to intervene in the above-styled proceeding, and in support thereof states:

1. The name and address of petitioner is as follows:

East County Water Control District
101 Construction Lane
Lehigh Acres, Florida 33971

Documents relating to this proceeding should be served on:

Michael B. Twomey, Esquire
Route 28, Box 1264
Tallahassee, Florida 32310
Telephone: (904) 421-9530
Fax: (904) 421-8543

and

Fred Schlosstein
Vice President
East County Water Control District
101 Construction Lane
Lehigh Acres, Florida 33971

2. The East County Water Control District is a drainage district within the meaning of Chapter 298, Florida Statutes. The East County Water Control District is a water and

CK _____
FA 3 _____
PP _____
AF _____
MU _____
TR _____
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EG 1 _____
IN 5 _____
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OTH *my Dr*

wastewater customer of Southern States Utilities, Inc.'s ("SSU") Lehigh water and wastewater plants, which are located solely in Lee County, Florida. In the above-styled docket SSU has requested a permanent increase in its annual revenues exceeding \$18.1 million and an interim revenue increase exceeding \$12 million on an annual basis. The Florida Public Service Commission ("PSC") is vested with the statutory authority and responsibility for setting "fair, just and reasonable" rates for SSU and its customers in this docket. SSU's rate petition requests that the sought-after revenue increases be applied to numerous SSU systems in Florida, specifically including the water and wastewater plants serving the East County Water Control District. Accordingly, the East County Water Control District is a person "whose substantial interests are being determined in [this] proceeding" within the definition of Section 120.52(12), Florida Statutes, and who is per se entitled to status as a "party" in this proceeding.

3. The Resolution of the Board of Supervisors of the East County Water Control District determining to intervene in this proceeding is attached.

WHEREFORE, the Board of Supervisors of the East County Water Control District requests (a) that it be granted leave to intervene and be permitted to participate in this proceeding with full rights as a party, (2) that the Order Granting Intervention direct SSU to immediately serve the East County Water Control District with a full and complete copy of its petition, testimony and all supporting documentation filed with the PSC, its staff and other parties, and (3) that PSC staff and other parties to this case be directed to serve upon the East County Water Control District copies of all documents either filed with the PSC or served upon other parties up to, and including, the date of the Order Granting Intervention.

Respectfully submitted,


Michael B. Twomey
Attorney for the East County Water
Control District
(904) 421-9530

DOCKET NO. 950495-WS
DATE: FEBRUARY 29, 1996

COMPOSITE EXHIBIT A
PAGE 3 OF 6

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and accurate copy of the foregoing has been furnished by

U.S. Mail this ~~29th~~ ^{30th} day of January, 1996 to the following persons:

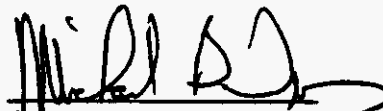
Brian Armstrong, Esquire
General Counsel
Southern States Utilities, Inc.
1000 Color Place
Apopka, Florida 32703

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

Kenneth A. Hoffman, Esquire
Rutledge, Ecenia, Underwood,
Purnell & Hoffman, P.A.
Post Office Box 551
Tallahassee, Florida 32302

Lila A. Jaber, Esquire
Division of Legal Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0862

Charlie Beck, Esquire
Harold McLean, Esquire
Associate Public Counsel
Office of the Public Counsel
c/o The Florida Legislature
111 West Madison Street, Suite 812
Tallahassee, Florida 32399-1400



Attorney

**RESOLUTION OF THE BOARD OF SUPERVISORS OF THE
EAST COUNTY WATER CONTROL DISTRICT**

WHEREAS a history of Lee County records that forty (40) years ago last September one Lee Ratner, Gerald Gould and others formed Lee County Land & Title Company and began to develop Lee Ratner's 33,000 acres of ranchland in east Lee County; and

WHEREAS history further records that the said developers began to dig drainage canals and construct roads throughout the said land; and

WHEREAS, history further records that the said lands were subdivided into building lots and an aggressive sales promotion was begun to offer buyers a lot for \$10.00 down and \$10.00 per month; and

WHEREAS many people began to move into Lehigh Acres, as it was now called, and contracted with the building section of the developer to build homes, construct septic tanks and drill wells; and

WHEREAS records show that subsequently two organizations were formed to provide utilities, wells were drilled and a sewer plant was begun. Subsequently Lehigh Utilities, Inc. was organized by the developers; and

WHEREAS on February 20, 1958 said Lee County Land & Title Company and Lee Ratner petitioned the 12th Judicial Circuit Court for the creation of a Drainage District under Chapter 298, Florida Statutes, and;

WHEREAS the said Court by decree No. 12,429, and acting upon the prayer of the petitioners found that the 33,976.35 acres set out in the petition were indeed unsuited for "sanitary or" agricultural purposes or "other public utility or benefit" and repeated the words "sanitary or other public utility or benefit" in the fourth paragraph of the decree creating the East County Water Control District; and

WHEREAS no such words or purpose are found for a drainage district in Chapter 298 Florida Statutes and are presumed gratuitous, and

WHEREAS later in 1963 the Florida Legislature re-created the East County Water Control District, Statute Chapter 63-1549, by adding lands in Hendry County, *striking by reference to the general drainage law the words "sanitary or" and "other public utility" and further stated in Section 7 that water was a "common enemy"; and*

WHEREAS the East County Water Control District now acting through its three (3) member Board of Supervisors, elected by the landowners of the District and who for the most part over the years were either officers or employees of the development corporation began a program of reclamation of the lands and expanding the District as the development corporation acquired title to more lands; and

WHEREAS the Consolidated Plan for Water Management prepared for said District and approved by the Supervisors by Gee & Jenson constantly refer to the construction of roads, sanitation and discharge of wastes, urban and other purposes and of water both for agricultural and domestic supply as well as conservation of water; and

WHEREAS with the passage of time and after an audit by the Auditor General the Legislature cited abuses in the operation of the East County Water Control District and removed the undue influence of the development corporations by requiring the election of five (5) supervisors by the electorate, and

WHEREAS by the time an elected Board of Supervisors took office most of the Plan of Reclamation had been put under contracts and funds were borrowed by numerous bond issues to implement said plan; and

WHEREAS in July of 1991 when the Resolution Trust Corporation sold the assets of Land Resources Corporation which included Lehigh Utilities, Lehigh Resort Motel, Lehigh Country Club, Buildings, Golf Courses, Building Supply Co., Publishing Co., building lots and undeveloped land for \$40 million the utility company received special treatment by the Resolution Trust Corporation inasmuch as it bowed to the Florida Public Service Commission of the State of Florida and delayed closing on the transaction until a separate arrangement of acquisition could be arranged for a series of transfers of properties by Seminole Utilities and Southern States Utilities for Lehigh Utilities, Inc. Said other entities also being subsidiaries of Minnesota Power & Light through its ownership of the Toepka Group; and

WHEREAS the Public Service Commission of the State of Florida by Docket No. 910781-WS, Order No. 25391-A has granted to said Seminole Utilities organizational control to substantially all of the land in the East County Water Control District; and

WHEREAS said Southern States Utilities now furnishing water and sewer to certain small sections of Lehigh Acres is drawing its water from the sandstone aquifer from ten (10) wells located in less than one (1) square mile in the center of downtown Lehigh Acres, six (6) of which are drilled in locations without sewer service and are still serviced with old septic tanks, SSU is serving 7% of the ECWCD land with sewers and has extended its service of water to 14% of the land; and

WHEREAS the East County Water Control District through its plans of reclamation by recharging the aquifer and providing a system of drainage to rid the sewer purification plant of its discharge of water via Able Canal and its feeder canal have a substantial interest in the operation of Southern States Utilities, now and in the future; and

DOCKET NO. 950495-WS
DATE: FEBRUARY 29, 1996.

COMPOSITE EXHIBIT A
PAGE 6 OF 6


WHEREAS the Public Service Commission in setting past utility rates for said Southern States Utilities failed to consider the financial contributions of the taxpayers of the East County Water Control District; and

WHEREAS there is now pending another water and sewer rate increase for Lehigh Acres customers, Docket No. 950495-WS.; now BE IT RESOLVED that the East County Water Control District on behalf of its taxpayers and rate payers of increasing water and sewer charges intervene in the case against the proposed rates.

This Resolution passed and adopted this 18 day of January, 1996.

EAST COUNTY WATER CONTROL DISTRICT

BY:


Fred Schlosstein, Vice President

ATTEST:

BY:


Margaret Weatherford, Secretary