

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application of Southern ) DOCKET NO. 920655-WS  
States Utilities, Inc., for ) ORDER NO. PSC-93-0340-PCO-WS  
Increased Water and Wastewater ) ISSUED: 03/04/93  
Rates in Collier County (Marco )  
Island Systems). )  
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ORDER DENYING PUBLIC COUNSEL'S MOTION TO COMPEL

On February 26, 1992, the Office of Public Counsel (OPC) filed a Motion to Compel in the above-referenced docket for the purpose of compelling Southern States Utilities, Inc. (Southern States of utility) to produce four documents. The documents were originally requested in OPC Request for Production of Document No. 85 served on the utility on December 10, 1992. On January 19, 1993, the utility filed its response to OPC's request. In the response, the utility maintains that these documents are attorney-client privileged communications. In support of its Motion, OPC states the following: 1) the utility did not assert a timely objection as required by Order No. PSC-92-1080-PCO-WS, Order Establishing Procedure; and 2) failure to assert the objection constitutes a waiver of the objection or privilege.

On March 1, 1993, the utility filed a Response to OPC'S Motion to Compel. In the Response, the utility states that: 1) OPC's argument has no legal basis; 2) the communications were rendered between the attorney and client during the course of representation and their confidentiality has been maintained; and 3) the utility has not waived the attorney-client privilege concerning the documents.

Upon review of OPC's Motion to Compel and the utility's Response, it appears that OPC's Motion must fail for lack of legal basis. OPC has not met its burden in demonstrating how the utility's failure to respond within ten days results in its waiver of the right to assert attorney-client privilege. Therefore, OPC's motion is hereby denied.

Based upon the foregoing, it is,

ORDERED by Commissioner Susan F. Clark, as Prehearing Officer, that the Office of Public Counsel's Motion to Compel is hereby denied.

DOCUMENT NUMBER-DATE

02461 MAR-48

FPSC-RECORDS/REPORTING

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By ORDER of Commissioner Susan F. Clark, as Prehearing Officer, this 4th day of March, 1993.

  
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SUSAN F. CLARK, Commissioner  
and Prehearing Officer

( S E A L )  
LAJ

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), 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.

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 25-22.038(2), 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.