

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application of Southern ) DOCKET NO. 920655-WS  
States Utilities, Inc., for ) ORDER NO. PSC-93-0341-PCO-WS  
Increased Water and Wastewater ) ISSUED: 3/5/93  
Rates in Collier County (Marco )  
Island Systems). )  
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ORDER GRANTING MOTION TO  
PERMIT CITIZENS TO FILE SUPPLEMENTAL TESTIMONY

On January 26, 1993, the Office of Public Counsel (OPC or Citizens) filed its prefiled direct testimony in the above-referenced docket. On February 26, 1993, OPC filed a Motion to Permit Citizens to File Supplemental Testimony.

In support of its Motion, OPC alleges the following: 1) the Citizens have diligently pursued discovery of information and have filed six separate discovery requests; 2) OPC filed various motions requesting permission to increase the limit of discovery, to which Southern States Utilities, Inc., (Southern States or utility) has responded; 3) the war of motions and the resulting orders caused delays in receiving the requested information; 4) large amounts of information could not be received and evaluated in time to be used in the January 26, 1993, testimony; 5) OPC's supplemental testimony addresses concerns found in the evaluations of discovery received from the utility after January 26, 1993; and 6) the utility would not be prejudiced by allowing OPC to file its supplemental testimony because the utility's rebuttal testimony anticipates and addresses issues identified in OPC's January 26, 1993, testimony as being the subject of any supplemental testimony.

On March 1, 1993, Southern States filed a Response to OPC's Motion to Permit Citizens to File Supplemental Testimony. In the Response, the utility basically asserts that: 1) OPC is itself responsible for any material delays in receiving responses to discovery requests; 2) no plausible explanation has been provided in support of OPC's election to wait until February 26, 1993, to file a Motion to File Supplemental Testimony; 3) OPC filed its request for six additional days to file testimony when it should have known which discovery responses and deposition exhibits would be due prior to OPC's filing testimony; 4) on February 24, 1993, OPC stated that it would be filing a Motion to File Supplemental Testimony, which was ultimately filed on February 26, 1993; 5) OPC has never provided any reason for waiting to file the supplemental testimony; and 6) to allow supplemental testimony at this late juncture would be extremely prejudicial and unfair to the utility; and 7) there is no time to begin analysis of the supplemental

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testimony or file surrebuttal--"such would impose a totally unreasonable burden on the Company, and violates any conceivable notion of due process."

OPC has clearly misrepresented the schedule of events described in its Motion as a "War of Motions." In various motions, OPC requested that the discovery limit set by Order No. PSC-92-1080-PCO-WS, establishing procedure be expanded. The "resulting orders" were the result of OPC's numerous motions. In any case, OPC seems to state in its Motion to File Supplemental Testimony that it has discovered new issues and concerns upon receipt of responses to the discovery. Further, OPC states that Ms. Dismukes' prefiled direct testimony outlines the subjects anticipated in the supplemental testimony. Ms. Dismukes' testimony, does in fact outline certain subjects. The utility and the Commission Staff received a copy of OPC's supplemental testimony on March 4, 1993.

Although it is unfortunate that the supplemental testimony is being submitted at such a late hour, it is appropriate to grant OPC'S motion because it does not appear that OPC intentionally delayed filing the testimony. It is critical that the Commission have all of the relevant evidence upon which to make it's decision regarding the utility's request for increased rates. Therefore, OPC's Motion to File Supplemental Testimony is hereby granted. OPC shall file its supplemental testimony immediately upon issuance of this Order. The utility may file additional rebuttal testimony to address matters raised in Ms. Dismukes' supplemental testimony.

Based upon the foregoing, it is, therefore,

ORDERED by Susan F. Clark, as Prehearing Officer, that Public Counsel's Motion to File Supplemental Testimony is hereby granted. It is further

ORDERED that Public Counsel shall file its supplemental testimony immediately upon issuance of this Order. The utility may file additional rebuttal testimony to address matters raised in Public Counsel's supplemental testimony.

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By ORDER of Commissioner Susan F. Clark, as Prehearing Officer, this 5th 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.