

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Investigation into) DOCKET NO. 930945-WS
Florida Public Service) ORDER NO. PSC-94-1279-PCO-WS
Commission jurisdiction over) ISSUED: October 14, 1994
SOUTHERN STATES UTILITIES, INC.)
in Florida.)
_____)

ORDER DENYING SOUTHERN STATES UTILITIES, INC.'S
MOTION TO STRIKE PORTIONS OF THE TESTIMONY OF
WITNESSES ON BEHALF OF SARASOTA COUNTY

On September 16, 1994, Southern States Utilities, Inc. (SSU or utility) filed with this Commission a Motion to Strike Portions of the Testimony of Witnesses on behalf of Sarasota County. On June 6, 1994, the Commission issued Order No. PSC-94-0686-DS-WS, in which we denied SSU's petition for a declaratory statement delineating Commission jurisdiction over the utility's water and wastewater operations in the nonjurisdictional counties of Polk and Hillsborough under Section 367.171 (7), Florida Statutes. In that order, this Commission also initiated an investigation to determine

which of SSU's facilities and land in Florida are functionally related and ... whether the combination of functionally related facilities and land, wherever located, constitutes a single system as that term is

¹The statute provides that
Notwithstanding anything in this section to the contrary, the commission shall have exclusive jurisdiction over all utility systems whose service transverse county boundaries, whether the counties involved are jurisdictional or nonjurisdictional, except for utility systems that are subject to, and remain subject to, interlocal utility agreements

DOCUMENT NUMBER-DATE

10525 OCT 14 1994

FPSC-RECORDS/REPORTING

defined in section 367.021 (11)² and as contemplated in section 367.171 (7). Order No. PSC-94-0686-DS-WS at p.2.

In Order No. PSC-94-0814-PCO-WS, an Order Establishing Procedure in this docket, the Commission identified the following four preliminary issues:

1. Are SSU's facilities and land functionally related?
2. Does the combination of functionally related facilities and land, wherever located, constitute a single system?
3. Does the Commission have exclusive jurisdiction over all SSU systems in the State of Florida?
4. Will the Commission have exclusive jurisdiction over all SSU systems acquired in the future?

Order No. PSC-94-0686-DS-WS at p.5.

On September 6, 1994, the Commission issued Order No. PSC-94-1095-PCO-WS, granting Sarasota County (the County) leave to intervene in this docket. Sarasota County timely filed the testimony of three witnesses on September 12, 1994: Kathleen R. Colombo, Rate Analyst Supervisor, Sarasota County Utilities Department, Franchise Division; Dewey E. Wallace, Franchise Division Manager, Sarasota County Utilities Department; and Richard A. Drummond, Manager, Sarasota County Planning Department, Long Range Planning Division. SSU's motion to strike is made in relation to this testimony. On September 26, 1994, Sarasota County timely filed its Response to Southern States Utilities, Inc.'s Motion to Strike.

First, SSU asserts that no portion of Mr. Drummond's or Mr. Wallace's testimony and only certain portions of Ms. Colombo's testimony are relevant to any of the issues set forth in the Order Establishing Procedure, Order No. PSC-94-0814-PCO-WS. The County responds that the testimony of Mr. Drummond and Mr. Wallace is directly related to the Commission's obligation, under Section 367.011(3), Florida Statutes, to protect the public health, safety, and welfare through the exercise of the police power of the State. Mr. Drummond addresses the importance of local government control of water and wastewater utilities in connection with the planning of development coordinated with the provision of public facilities

²The statute provides that

"System" means facilities and land used or useful in providing service and, upon a finding by the commission, may include a combination of functionally related facilities and land.

and services. Mr. Wallace addresses the effect of local government control of water and wastewater utilities on the effectiveness and efficiency of regulation. Ms. Colombo addresses the present Sarasota County regulation of the Venice Gardens utility system, the SSU-owned water and wastewater system.

Upon reviewing the testimony, it appears that the testimony of Mr. Drummond and Mr. Wallace, as well as that of Ms. Colombo, concerns whether regulatory tension is created by the interplay of Section 367.171 (7), Florida Statutes; Section 125.01 (k) 1, Florida Statutes, granting the legislative and governing body of a county government the power to "provide and regulate waste and sewage collection and disposal, water supply, and conservation programs;" Section 163.3161 (2), Florida Statutes, providing that "it is the purpose [of the Local Government Comprehensive Planning and Land Development Regulation Act] to utilize and strengthen the existing role, processes and powers of local governments ... to guide and control future development;" and Section 163.3161 (3), Florida Statutes, providing that "it is the intent of this act that its adoption is necessary so that local governments can preserve and enhance present advantages; encourage the most appropriate use of land, water, and resources, consistent with the public interest ...; facilitate the adequate and efficient provision of transportation, water, sewerage ...; and conserve, develop, utilize, and protect natural resources within their jurisdictions."

Sarasota County's testimony may be helpful to the Commission's understanding of the broad jurisdiction issues we set forth in Order No. PSC-94-0686-DS-WS, and particularly to the issues that ask whether the Commission has exclusive jurisdiction over all existing and future-acquired SSU systems in Florida, including those operating entirely within a single nonjurisdictional county's boundaries.

Second, SSU asserts more particularly that Mr. Drummond's testimony focuses upon Sarasota County's comprehensive plan; that the existence and contents of the plan are not relevant to the issues to be decided in this proceeding; and that the Commission is not bound by county comprehensive plans. The County responds that Mr. Drummond's testimony supports the relevance of the Local Government Comprehensive Planning and Land Development Act to the issue of local jurisdiction over water and wastewater treatment systems located solely within a county.

The Commission is to determine in this docket whether specific SSU utilities, whose operation and service distribution are contained within a single county that has not elected to be subject to the Commission's jurisdiction, but which may receive

administrative direction and operational support from outside the county, are to be considered part of a system as contemplated in Section 367.171 (7), Florida Statutes. SSU owns and operates a water and wastewater utility entirely within the boundaries of Sarasota County, a nonjurisdictional county. In addition, SSU owns and operates utilities in the nonjurisdictional counties of Polk, Hillsborough, Hernando, and St. Johns. In Board of County Commissioners of St. Johns County v. Beard, 601 So. 2d 590 (1st DCA 1992), the court determined that the language of section 367.171 (7), Florida Statutes, is to be given its plain meaning. Id. at 600. It rejected the county's assertion that functional relationship, within the meaning of the statute, requires an actual physical connection. Id. at 601. What is left to be determined as a matter of fact in a specific case is whether the utility facilities in question are "functionally related." The County is correct that Mr. Drummond's testimony may be relevant to this determination.

Third, SSU asserts that Mr. Wallace's testimony concerns a comparison of the regulatory practices and procedures of the County and the Commission, and that that is irrelevant to the issues to be decided in this proceeding. The County responds that Mr. Wallace's testimony identifies local regulation public policy concerns with customer service, site-specific environmental problems, level of scrutiny, and political accountability, and the ordinances and procedures followed by the County in rate applications as they effect regulatory efficiency.

As already stated, in the Order Establishing Procedure, the Commission has identified as a preliminary issue, whether it has exclusive jurisdiction over all of SSU's Florida systems. In making its determination, the Commission may need to consider underlying regulation policy as construed by the counties.

Fourth, SSU relies upon this Commission's statement in Order No. 22459, issued in Docket No. 891190-WS, Petition of General Development Utilities, Inc., that other options to control growth are available to local governments, such as zoning or permitting, and that the Commission's jurisdiction was exclusive over a multi-county system, absent an inter-local agreement. The County responds that the Commission's Order No. 22459 is not pertinent precedent in the instant docket, because in that order the Commission determined jurisdiction over a water and wastewater facility providing services in three contiguous counties, whereas SSU provides such services fully within Sarasota County through its Venice Gardens systems.

Order No. 22459 is not necessarily dispositive in this docket. However, this docket may address the very same issue in circumstances that may or may not be distinguishable.

Fifth, SSU asserts that four portions of Ms. Colombo's testimony are not relevant to the Commission's jurisdictional determination: (i) Ms. Colombo's attestations of her knowledge of utility regulation generally and of the regulatory relationship of the County and SSU/Venice Gardens³; (ii) Ms. Colombo's explication of "used and useful⁴;" (iii) Ms. Colombo's opinion of the effect of geographical area on utility operational costs⁵; and (iv) Ms. Colombo's opinion on whether local regulation is more effective than state regulation in respect to the concerns of environmental regulation⁶. The County responds (i) that Ms. Colombo's knowledge of utility regulation generally and of the regulatory relationship of the County and SSU/Venice Gardens supports her opinion regarding the functional relatedness of the Venice Gardens systems to other SSU-owned Florida systems; (ii) that understanding the term "used and useful" is necessary to an interpretation of the meaning of the term "system;" (iii) that Ms. Colombo's opinion of the effect of geographical area on utility operational costs is relevant to the policy issue of local control; and (iv) that Ms. Colombo's opinion on whether local regulation is more effective than state regulation in respect to the concerns of environmental regulation is relevant to public policy underlying the instant jurisdictional issue.

Upon reviewing Ms. Colombo's testimony, it appears that the challenged portions are at least marginally relevant to the jurisdictional issues raised in this docket and to the public policy concerns, already identified, that underlie them.

In consideration of the foregoing, SSU's Motion to Strike Portions of the Testimony of Witnesses on behalf of Sarasota County is denied. The nature of this investigation into the Commission's jurisdiction over all SSU systems in Florida allows room to consider the public policy concerns addressed in Sarasota County's testimony.

Based on the foregoing, it is, therefore,

³Page 2, line 23 through page 4, line 17.

⁴Page 5, line 22 through page 6, line 12.

⁵Page 9, lines 4 through 24.

⁶Page 10, line 10 through page 11, line 10.

ORDER NO. PSC-94-1279-PCO-WS
DOCKET NO. 930945-WS
PAGE 6

ORDERED by Commissioner Julia J. Johnson, Prehearing Officer, that Southern States Utilities, Inc.'s Motion to Strike Portions of the Testimony of Witnesses on behalf of Sarasota County is hereby denied.

By ORDER of the Florida Public Service Commission, this 14th day of October, 1994.



JULIA J. JOHNSON, PREHEARING OFFICER
Florida Public Service Commission

(S E A L)

CJP

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.