

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application for rate ) DOCKET NO. 950495-WS  
increase and increase in service ) ORDER NO. PSC-96-0424-FOF-WS  
availability charges by Southern ) ISSUED: March 26, 1996  
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. )  
\_\_\_\_\_ )

The following Commissioners participated in the disposition of this matter:

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

ORDER ON RECONSIDERATION OF ORDER NO. PSC-95-1503-CFO-WS

BY THE COMMISSION:

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.

On October 9, 1995, SSU filed an objection to, among other things, Interrogatory No. 241 from the Office of Public Counsel's (OPC) Seventh Set of Interrogatories, along with a motion for protective order. OPC did not file a response to the motion. By Order No. PSC-95-1503-CFO-WS, issued December 5, 1995, among other things, the Prehearing Officer overruled SSU's objection and directed the utility to respond to Interrogatory No. 241 within fifteen days of the date of the order. On December 15, 1995, SSU

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filed a Motion for Reconsideration of Order No. PSC-95-1503-CFO-WS, requesting that the Commission reconsider and withdraw the portion of the order that pertains to Interrogatory No. 241.

By Interrogatory No. 241, OPC requested the following information:

Please explain the accounting treatment of the Lehigh [e]scrow funds on both the books of SSU and Lehigh Corporation and their parent companies. Identify any accounts and the amounts on the Company's books which relate to this escrow fund. Provide the same information for Lehigh Corporation and its parents. Please explain why the entire amount of these escrowed funds should not be considered CIAC.

SSU objected to this interrogatory to the extent it solicited detailed accounting information from the books and records of Lehigh Corporation and its parents (Lehigh), arguing that it does not have possession, custody or control over the books and records of affiliated companies, and that it can only state an understanding or belief of the pertinent Lehigh booking entries. OPC did not file a response to the objection or to the motion, nor did it file a motion to compel a response to this discovery request.

#### Motion for Reconsideration

Rule 25-22.0376(1) Florida Administrative Code, permits a party who is adversely affected by an order of a prehearing officer to file a motion for reconsideration of that order. The standard for reconsideration is as set out in Diamond Cab Co. of Miami v. King, 146 So. 2d 889 (Fla. 1962). In that case, the Florida Supreme Court stated that the purpose of a petition for rehearing is merely to bring to the attention of the trial court or the administrative agency some point which it overlooked or failed to consider when it rendered its order in the first instance, and it is not intended as a procedure for rearguing the whole case merely because the losing party disagrees with the judgment. Id. at 891. In Stewart Bonded Warehouse, Inc. v. Bevis, 294 So. 2d 315, 317 (Fla. 1974), the Court found that the granting of a petition for reconsideration should be based on specific factual matters set forth in the record and susceptible to review. We have applied these standards in our review of SSU's motion.

As grounds for its motion for reconsideration, SSU states that on December 14, 1995, counsel for OPC informed counsel for SSU that OPC did not want, and would not move to compel SSU to provide, a

response to Interrogatory No. 241, as directed by the order. According to SSU, counsel for OPC also stated that OPC had not expected a ruling on SSU's objection to Interrogatory No. 241 because OPC did not move to compel an answer to that interrogatory. Moreover, SSU states that it served a response to Interrogatory No. 241 on OPC on November 6, 1995, and that it now appears that OPC was satisfied with that response notwithstanding SSU's limited objection. SSU argues that OPC effectively withdrew the objectionable portion of Interrogatory No. 241, and that disposition of the objection thereto was never necessary. According to SSU, no dispute existed regarding Interrogatory No. 241 and the issue should have been deemed moot.

We note that a dispute indeed existed regarding Interrogatory No. 241, which the Prehearing Officer resolved by way of Order No. PSC-95-1503-CFO-WS. SSU created that dispute when it filed its objection to the interrogatory along with a motion for protective order. The Prehearing Officer was not informed of the dispute resolution until SSU so advised the Commission by way of the instant motion for reconsideration. Therefore, the Prehearing Officer acted appropriately upon the information that she had before her at the time of her ruling. Because SSU has not demonstrated that the Prehearing Officer made a mistake of fact or law in her ruling as required by Diamond Cab, we hereby deny SSU's motion for reconsideration.

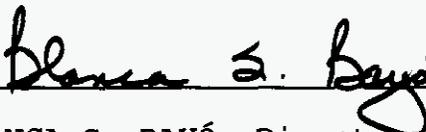
We also note that SSU states that it believed it necessary to file the instant motion so that it would not later be found in violation of a discovery order for failure to provide the required information to OPC. For purposes of the record, we hereby acknowledge that SSU has indicated that it has served a partial response to Interrogatory No. 241 on OPC, and that because OPC has not indicated otherwise by way of a response to the instant motion for reconsideration, it appears that OPC is satisfied with that response.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Southern States Utilities, Inc.'s, Motion for Reconsideration of Order No. PSC-95-1503-CFO-WS is hereby denied.

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By ORDER of the Florida Public Service Commission, this 26th  
day of March, 1996.



BLANCA S. BAYÓ, Director  
Division of Records and Reporting

( S E A L )

RGC

NOTICE OF 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 the Commission's final action in this matter may request 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 by filing a notice of appeal with the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.