

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for rate) DOCKET NO. 920199-WS
increase in Brevard, Charlotte/) ORDER NO. PSC-92-1070-PCO-WS
Lee, Citrus, Clay, Duval,) ISSUED: 09/28/92
Highlands, Lake, Marion,)
Martin, Nassau, Orange,)
Osceola, Pasco, Putnam,)
Seminole, Volusia, and)
Washington Counties by SOUTHERN)
STATES UTILITIES, INC.; Collier)
County by MARCO SHORES)
UTILITIES (Deltona); Hernando)
County by SPRING HILL UTILITIES)
(Deltona); and Volusia County)
by DELTONA LAKES UTILITIES)
(Deltona))

ORDER DENYING MOTION TO STRIKE TESTIMONY
AND REQUEST FOR ORAL ARGUMENT

On May 11, 1992, Southern States Utilities, Inc., and Deltona Utilities, Inc. (collectively, SSU or utility) filed its application and minimum filing requirements (MFRs). On June 17, 1992, SSU completed the MFRs and therefore, June 17, 1992, was established as the official date of filing.

In a letter dated March 2, 1992, SSU requested approval to file its prepared direct testimony thirty days after the approval of the utility's MFRs. On April 1, 1992, the Chairman issued the test year approval letter in the above-referenced docket. In the letter, the Chairman approved the utility's request to file its prepared direct testimony thirty days after the approval of the MFRs. By Order No. PSC-92-0638-PCO-WS, issued July 10, 1992 (Order Establishing Procedure), the Prehearing Officer established July 22, 1992, as the date the utility was required to file its direct testimony and exhibits. On July 22, 1992, SSU filed its direct testimony for this rate case.

On July 24, 1992, the Office of Public Counsel (OPC) filed a Motion to Strike Testimony and Request for Oral Argument. In its motion, OPC seeks to strike certain testimony filed by SSU in the above-referenced docket. As basis for striking the testimony, OPC states the following: (1) Rule 25-30.430(3)(a), Florida Administrative Code, requires simultaneous filing of testimony as part of the MFRs where a formal hearing is anticipated; (2) the Commission has neither waived the provisions of Rule 25-30.430, Florida Administrative Code, nor has it afforded OPC a point of

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entry into the administrative process to participate in any proceeding in which it could be waived; (3) the testimony received by OPC on July 22, 1992, was more than thirty days late; and (4) responding to testimony which is more than thirty days late works an undue prejudice upon the Citizens.

On August 4, 1992, SSU filed a response to OPC's motion. SSU asserts that OPC's motion is not timely. SSU states that OPC had actual or constructive knowledge of the Chairman's decision on April 1, 1992, the date of the Chairman's letter and that OPC waived any right to challenge the Chairman's decision when it did not challenge the portion of the Order Establishing Procedure addressing prefiled testimony.

Rule 25-30.430(3), Florida Administrative Code, states that "in the test year approval letter the Commission Chairman may advise whether or not prepared testimony in support of the utility's application will be required to be filed as part of the MFRs." (Emphasis supplied.) The Chairman, pursuant to the above-referenced rule, granted the utility's request and, in effect, found it appropriate not to require a simultaneous filing of the MFRs and the testimony. Since the Chairman acted pursuant to authority given by the above-referenced rule, I disagree with OPC's assertion that a waiver of the rule transpired. Furthermore, it is my belief that OPC's motion is an untimely challenge to the Order Establishing Procedure which set the date for the utility filing of its testimony. The utility filed its testimony on July 22, 1992, in accordance with Order No. PSC-92-0638-PCO-WS. Therefore, the utility complied with our Order and timely filed its testimony to support this rate case. Based on the reasons stated above, it is appropriate to deny OPC's Motion to Strike Testimony and Request For Oral Argument. I do not think oral argument is required. The pleadings of the parties contain sufficient argument for me to render a complete and fair decision on OPC's motion.

Based on the foregoing, it is therefore

ORDERED by Commissioner Betty Easley, as Prehearing Officer, that the Motion to Strike Testimony filed by the Office of Public Counsel is hereby denied. It is further

ORDERED that the Office of Public Counsel's Request for Oral Argument on the Motion to Strike Testimony is hereby denied.

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By ORDER of Commissioner Betty Easley, as Prehearing Officer,
this 28th day of September, 1992.



BETTY EASLEY, Commissioner
and Prehearing Officer

(S E A L)

BE/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.