

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application of Southern) DOCKET NO. 920655-WS
States Utilities, Inc. for) ORDER NO. PSC-93-0463-PCO-WS
Increased Water and Wastewater) ISSUED: 3/25/93
Rates in Collier County (Marco)
Island Systems).)
_____)

ORDER DENYING PUBLIC COUNSEL'S
MOTION REQUESTING IN CAMERA INSPECTION

On March 18, 1993, the Office of Public Counsel (OPC) filed a Motion to Compel and Request for In Camera Inspection of Documents. In it's Motion, OPC requests that the Commission compel Southern States Utilities, Inc. (Southern States or utility) to produce the four documents that have been the subject of the utility's claim of attorney-client privilege and the subject of OPC's February 26, 1993, motion to compel.

OPC now requests that these documents be produced so the Commission can conduct an in camera inspection to determine if the utility's refusal to furnish the documents in this proceeding is appropriate and based upon a legitimate attorney-client privilege. In support of its request, OPC states that the Commission has never reviewed the subject documents to determine if the documents are indeed privileged attorney-client communications. Further, the party asserting the privilege has the burden of establishing the existence of the privilege.

On March 24, 1993, Southern States timely filed a Response to Public Counsel's Motion to Compel and Request for In Camera Inspection of Documents. In its response, the utility contends first, that OPC's Motion is an untimely request for reconsideration of Order No. PSC-93-0340-PCO-WS, issued March 4, 1993, denying OPC's Motion to Compel. Pursuant to Order No. PSC-93-0340-PCO-WS, OPC could have requested reconsideration within ten days; therefore, OPC has waived its right to seek reconsideration. Second, the utility correctly points out that the discovery cut-off date was March 1, 1993.

The discovery deadline is set forth on page 1 of Order No. PSC-92-1080-PCO-WS, issued September 30, 1992 (Order Establishing Procedure). The Order Establishing Procedure specifically states that "all discovery shall be completed by March 1, 1993." OPC has untimely filed its Motion seeking an in camera inspection. OPC had the opportunity to request an in camera inspection in its first Motion to Compel filed February 26, 1993, and did not.

DOCUMENT NUMBER-DATE

03310 MAR 25 83

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The utility's argument that OPC's Motion is really an untimely request for reconsideration is partially correct. It does appear that OPC is indeed requesting that the Prehearing Officer reconsider the Order denying OPC's first Motion to Compel. OPC has requested that Commission compel the utility to compel the four documents for the purpose of the Commission viewing the documents. Again, if OPC is indeed seeking reconsideration, it is an untimely request.

Based on the foregoing, it is, therefore,

ORDERED by Commissioner Susan F. Clark, as Prehearing Officer that Public Counsel's Motion to Compel and Request for In Camera Inspection of Documents is denied.

By ORDER of Commissioner Susan F. Clark, as Prehearing Officer, this 25th day of March, 1993.



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.