BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for a rate increase in Citrus, Martin, Marion, and Charlotte/Lee Counties by SOUTHERN STATES UTILITIES, INC.; in Collier County by MARCO ISLAND UTILITIES (DELTONA) and MARCO SHORES UTILITIES (DELTONA); in Marion County by MARION OAKS UTILITIES (UNITED FLORIDA); and in Washington County by SUNNY HILLS UTILITIES (UNITED FLORIDA)	DOCKET NO. 900329-WS ORDER NO. 24715 ISSUED: 6/26/91

The following Commissioners participated in the disposition of this matter:

BETTY EASLEY
GERALD L. GUNTER

APPEARANCES:

B. KENNETH GATLIN and WAYNE L. SCHIEFELBEIN, Esquires, Gatlin, Woods, Carlson & Cowdery, 1709-D Mahan Drive, Tallahassee, Florida 32308
On behalf of Southern States Utilities, Inc.

PATRICK K. WIGGINS, Esquire and ROBERT SCHEFFEL WRIGHT, Class B Practitioner, Wiggins and Villacorta, 501 East Tennessee Street, Suite B, Tallahassee, Florida 32308
On behalf of Cypress and Oak Villages Association

JACK SHREVE and HAROLD McLEAN, Esquires, Office of the Public Counsel, Claude Pepper Building, Room 812, 111 West Madison Street, Tallahassee, Florida 32399-1400
On behalf of the Citizens of the State of Florida

ROBERT J. PIERSON, MATTHEW J. FEIL and NOREEN S. DAVIS, Esquires, Florida Public Service Commission, Division of Legal Services, 101 East Gaines Street, Tallahassee, Florida 32399-0863
On behalf of the Commission Staff

PRENTICE P. PRUITT, Esquire, Florida Public Service Commission, Office of the General Counsel, 101 East Gaines Street, Tallahassee, Florida 32399-0850
Counsel to the Commissioners

FINAL ORDER DENYING APPLICATION
FOR INCREASED RATES AND CHARGES

BY THE COMMISSION:

BACKGROUND

Southern States Utilities, Inc., (SSUI) Deltona Utilities, Inc. (DUI) and United Florida Utilities Corporation (UFU), herein after also referred to as "utility", are Class A utilities with many different systems located across the State of Florida. All three utilities are wholly-owned subsidiaries of the Topeka Group, Inc. (Topeka)

As of December 31, 1989, all of the utility systems under this rate increase application had 11,976 water customers and 6,917 wastewater customers. The combined water systems had actual operating revenues of $1,166,547 and a net operating income of $99,871 for the year ended December 31, 1989. The wastewater systems had actual operating revenues of $2,518,745 and a net operating income of $319,967 for the same period.

On July 13, 1990, the utility filed its minimum filing requirements (MFRs) for a rate increase which were determined to be deficient. On September 28, 1990, the utility refiled the MFRs which were accepted as complete and that date was established as the official date of filing. On October 15, 1990, the utility filed an amended application for increased rates which reflected the changes made in the MFRs on September 28, 1990. October 15, 1990 was established as the official date of filing. The test year for final rates is the projected twelve-month period ended December 31, 1991, based on the historical year ended December 31, 1989. The utility requested that this case be scheduled for formal hearing and not processed pursuant to the proposed agency action process.

The applicant has requested final water rates designed to generate annual revenues based on four uniform rate structures for the systems included in this application which have like types of treatment. It further states that the final rates requested would be sufficient to recover an 11.93 percent rate of return on rate base.

The Commission held four service hearings in this case. The first service hearing, which covered Marion and Citrus counties, was held on October 25, 1990, in Ocala, Florida. Fourteen customers presented testimony. The second service hearing, which covered Collier, Lee and Charlotte Counties, was held on November 27, 1990, in Naples, Florida. Seven customers testified. The third service hearing, which covered Washington County, was held on December 3, 1990, in Sunny Hills, Florida. Twelve customers testified. The last service hearing covered Martin County and was held in Stuart, Florida, on January 3, 1991. At this hearing sixteen customers testified.

The Commission acknowledged the intervention of the Office of Public Counsel (OPC) by Order No. 23496, issued on September 17, 1990. On November 26, 1990, the Commission issued Order No. 23803 granting the intervention of the Cypress and Oak Villages Association.

The utility requested interim water rates, in total designed to generate $1,667,066. These revenues exceeded test year revenues by $500,519, for an increase of 42.91 percent. The utility requested interim wastewater rates designed to generate annual revenues of $3,510,010. These requested revenues exceeded test year revenues by $991,265, for a 39.36 percent increase. The utility stated that this increase in revenue would be sufficient to recover operating expenses and a reasonable return on its rate base. The interim test period is the twelve-months ended December 31, 1989.

On December 11, 1990, the Commission issued Order No. 23860 which suspended the proposed rates and granted interim rates. The Commission granted a county-wide uniform percentage increase for both water and wastewater. The interim increase is subject to refund and secured by corporate undertakings filed by SSUI, DUI and UFU.

The prehearing conference was held on January 22, 1991, in Tallahassee, Florida. The hearing, also in Tallahassee, was held February 11-16, 1991. Briefs from all parties were filed with the Division of Records and Reporting on April 1, 1991.

During the hearing in this case, OPC made two motions to dismiss. The first was based on OPC's view that the MFRs were incomplete and thus the utility did not carry its burden of proof. The second was based on OPC's belief that the customers have been

denied due process because of the additional information allowed in after the filing. The utility responded by stating that the argument goes to the weight of the evidence and that will be determined by the Commission in its final order.

Upon consideration, the Commission denied both motions at the conclusion of the hearing on the basis that it believed there was an adequate record upon which to make a decision. The Commission noted that it is not uncommon for companies to have problems with their filings - some to a greater or lesser degree than others - and that companies often do not realize what they have asked for. Essentially, the Commission stated it would review the record and determine whether the utility had carried its burden of proof for the increases requested.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having heard the evidence presented at hearing and having reviewed the recommendation of staff, as well as the briefs of the parties, we now enter our findings and conclusions.

The burden of proof is upon the utility to show that its present rates are unreasonable, fail to compensate the utility for its prudently incurred expenses and fail to produce a reasonable return on its investment. South Florida Natural Gas v. Florida Public Service Commission, 534 So.2d 695 (Fla. 1988); Florida Power Corporation v. Cresse, 413 So.2d 1187 (Fla. 1982). In this proceeding, our review of the record before us leads us to unanimously conclude that the utility did not carry its burden of proof to show by a preponderance of the evidence that it was entitled to a change in its rates. We have jurisdiction to determine the water and wastewater rates of SSUI, DUI, and UFU pursuant to Sections 367.011 and 367.081, Florida Statutes.

The utility filed its case seeking increases for 34 of its systems located in 7 counties. It included those systems which were allegedly earning below their authorized rates of return. The utility was also seeking to have uniform rates applied to these systems.

When analyzing the record, we repeatedly were confronted with fundamental flaws in the utility's case. An example is rate base. The utility could not justify its expenditure for land purchased from Deltona Corporation pursuant to the 1989 purchase by Topeka,

the utility's parent. Supporting detail was lacking regarding original cost or fair market value. The utility is required to keep its books in accordance with the Uniform System of Accounts published by NARUC. Plant received as part of an acquired operating unit should be recorded at the cost to the person who first devoted it to public service. The recorded amount for subsequently purchased plant should be the cost incurred by the utility.

As part of the Topeka purchase of the DUI and UFU utility systems, Topeka acquired existing plant sites and sites for future utility use. The record shows that some of the land described as future use property had been in utility service when acquired. The utility's witness did not know whether the asking price for existing sites conformed with the original cost when first devoted to utility service. He did not know whether Topeka performed any tests to assure itself that the asking price equalled the cost incurred by the Deltona Corporation. He testified that appraisals would be performed later to establish the market value of the acquired properties in three of the counties in this case. Appraisals were also being performed to determine the value of land when it was first utilized for service. He admitted that a larger purchase price would increase the credit acquisition adjustment relating to the purchase. Thus, we could not include the reported land costs of approximately $3,963,400 if we were to determine rate base.

Most troubling perhaps, was that the utility's construction budget showed the errors in the utility's own projections. Exhibit 39 compared the 1990 budgeted amounts for construction projects by county as shown in the MFRs with the actual year-end expenditures. It also compared the 1991 amounts in the MFRs with the current revised 1991 budgets. For both years, the figures shown in the MFRs were incorrect by over 50 percent. The 1990 MFR forecasted total was $15,821,560; the 1990 actual expenditures were $7,285,083. The 1991 MFR forecasted total was $10,647,177; the 1991 current revised budget was $21,256,836. The record shows that the planned improvements were either not made, delayed beyond the test year, or more or less expensive than projected.

Rate base is to ratemaking what a foundation is to a house since it is the basis upon which the utility's earnings are determined. If the utility's own forecasts are so severely in error, it casts a deep shadow on the credibility of the data

submitted and makes it very difficult to build a house that will remain standing.

The utility's operating budgetary process was also problematic. While called "zero-based budgeting," the utility's presentation indicated to us that its budgeting process was more of a "continuation budget" than zero-based budgeting as that term is commonly understood. In reviewing the budgetary process, one would have to accept that the 1989 expenditures would stand the test of scrutiny. However, there is a difference to this Commission between expenditures stated and expenditures justified. The South Florida Natural Gas and Florida Power Corporation cases previously cited support the concept that stating what an expenditure is, is not the same as justifying why that expenditure was made so that we can determine its reasonableness. Producing cost data does not in and of itself show the reasonableness of that data. The record does not contain justification for the underlying 1989 data upon which the 1990 and 1991 projections were based.

The utility's allocation method used for administrative and general (A & G) expenses of the Apopka office (overhead) was also troublesome. Using the utility's method results in the Sunny Hills system, which has approximately 400 water and 180 wastewater customers, being allocated approximately $36,000 in A & G expenses. This not only raises the question of the correctness of the allocation method, but whether such allocations are in the public interest. Out of over $5 million in A & G expenses for the utility as a whole, approximately $2 million is allocated to the 34 systems in this case. The utility has not justified this level of expense or allocation in our view.

While the utility is seeking to apply uniform rates to these systems, its approach to the case was far from uniform. The record reflects that the utility's consultants used varying methods of treatment on numerous issues. This resulted in inconsistent treatment of the same issue. Further, for Citrus County, the utility did not include all the systems in this county, yet it wanted uniform rates applied to that county. This would leave the other systems in that county with different rates. When asked why the other systems in that county were excluded from the filing, the witness indicated time constraints and the earnings level of the excluded systems as the reasons. Yet we note that the utility had time to refile its sizeable MFRs because the first filing contained so may deficiencies.

Looking at the record as a whole, we find the utility's data to be so flawed and incomplete as to have little probative value. Because we cannot depend on the base year data, we cannot in good faith make adjustments to try to save the utility's case. We know of no way to alternatively group these systems or design a rate structure based on persuasive data in the record. The rates requested by the utility were based on the investment and expenses shown in the MFRs and that data has been shown to be suspect. If we were to utilize an alternative 1989 test year and design system - specific rates, we would be basing that design on underlying data that was not justified during the course of the hearing. At various times during the six days of the hearing, we expressed our frustration with the quality of the evidence being presented. We allowed utility witnesses to return to the stand to present additional evidence. However, the utility was unable, in our view of the record, to present credible evidence that could withstand our scrutiny. Since it is not our responsibility to make the utility's case, we will not do so.

Accordingly, based on the evidence before us, we conclude that the utility has not carried its burden of proof of entitlement to increased rates. Its application is hereby denied in its entirety. The interim rates granted in Order No. 23860, must therefore be refunded with interest, pursuant to Rule 25-30.360, Florida Administrative Code.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the application of Southern States Utilities, Inc. Deltona Utilities, Inc. and United Florida Utilities Corporation for increased rates and charges for 34 systems in Citrus, Charlotte/Lee, Collier, Marion, Martin and Washington Counties, is hereby denied. It is further

ORDERED that the interim water and wastewater rates authorized in Order No. 23860 shall be refunded, with interest, pursuant to Rule 25-30.360, Florida Administrative Code. It is further

ORDERED that the utilities shall file revised tariffs reflecting the rates that were in effect prior to the issuance of Order No. 23860. It is further

ORDERED that this docket shall be closed upon the verification of the completion of the refund.

By ORDER of the Florida Public Service Commission, this 26th day of JUNE, 1991.

STEVE TRIBBLE, Director
Division of Records and Reporting

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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 the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) 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 sewer utility by filing a notice of appeal with the Director, Division of Records and Reporting 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.