BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Investigation into Florida Public Service Commission jurisdiction over SOUTHERN STATES UTILITIES, INC. in Florida.	)	DOCKET NO. 930945-WS ORDER NO. PSC-95-0041-PHO-WS ISSUED: January 10, 1995

Pursuant to Notice, a Prehearing Conference was held on December 15, 1994, before Commissioner Julia L. Johnson, as Prehearing Officer.

APPEARANCES:

KENNETH A. HOFFMAN, Esquire, Rutledge, Ecenia, Underwood, Purnell & Hoffman, 215 South Monroe Street, Suite 420, Tallahassee, Florida 32301-1841, and MATTHEW J. FEIL, Esquire, Southern States Utilities, Inc., 1000 Color Place, Apopka, Florida 32703
On behalf of Southern States Utilities, Inc.

TIMOTHY F. CAMPBELL, Esquire, Polk County Attorney's Office, P.O. Box 60, Bartow, Florida 33831
On behalf of Polk County.

DONALD R. ODOM, Esquire, Hillsborough County Attorney's Office, P.O. Box 1110, Tampa, Florida 33601
On behalf of Hillsborough County.

KATHLEEN F. SCHNEIDER, Esquire, Sarasota County Attorney's Office, 1549 Ringling Boulevard, Third Floor, Sarasota, Florida 34236
On behalf of Sarasota County.

MICHAEL B. TWOMEY, Esquire, Route 28, Box 1264, Tallahassee, Florida 32310
On behalf of Hernando County.

ROBERT J. PIERSON and MARGARET E. O'SULLIVAN, Esquires, Florida Public Service Commission, 101 E. Gaines Street, Tallahassee, Florida 32399-0863
On behalf of the Commission Staff.

RICHARD C. BELLAK, Esquire, Florida Public Service Commission, 101 E. Gaines Street, Tallahassee, Florida 32399-0862
Counsel to the Commissioners.

PREHEARING ORDER

I. CASE BACKGROUND

By Order No. PSC-94-0686-DS-WS, issued June 6, 1994, this Commission denied a petition by Southern States Utilities, Inc. (SSU) for a declaratory statement regarding our jurisdiction over its operations in the nonjurisdictional counties of Polk and Hillsborough under Section 367.171(7), Florida Statutes. However, by Order No. PSC-94-0686-DS-WS, we also initiated an investigation to consider the matter of our jurisdiction over SSU's operations in nonjurisdictional counties throughout the state. This case is scheduled for an administrative hearing on January 23 through 26, 1995.

On August 26, 1994, Sarasota County petitioned to intervene in this proceeding. Its petition was granted by Order No. PSC-94-1095-PCO-WS, issued September 6, 1994. On September 2, 1994, Hillsborough County petitioned to intervene in this case. Its petition was granted by Order No. PSC-94-1133-PCO-WS, issued September 15, 1994. On September 8, 1994, Polk County petitioned to intervene. Its petition was granted by Order No. PSC-94-1190-PCO-WS, issued September 29, 1994. By Order No. PSC-94-1363-PCO-WS, issued November 9, 1994, as amended by Order No. PSC-94-1363A-PCO-WS, issued November 21, 1994, party status was conferred upon Hernando County.

II. PROCEDURE FOR HANDLING CONFIDENTIAL INFORMATION

A. Any information provided pursuant to a discovery request for which proprietary confidential business information status is requested shall be treated by the Commission and the parties as confidential. The information shall be exempt from Section 119.07(1), Florida Statutes, pending a formal ruling on such request by the Commission, or upon the return of the information to the person providing the information. If no determination of confidentiality has been made and the information has not been used in the proceeding, it shall be returned expeditiously to the person providing the information. If a determination of confidentiality has been made and the information was not entered into the record of the proceeding, it shall be returned to the person providing the information within the time periods set forth in Section 367.156, Florida Statutes.

B. It is the policy of the Commission that all Commission hearings be open to the public at all times. The Commission also recognizes its obligation pursuant to Section 367.156, Florida

Statutes, to protect proprietary confidential business information from disclosure outside the proceeding.

In the event it becomes necessary to use confidential information during the hearing, the following procedures will be observed:

1. Any party wishing to use any proprietary confidential business information, as that term is defined in Section 367.156, Florida Statutes, shall notify the Prehearing Officer and all parties of record by the time of the Prehearing Conference, or if not known at that time, no later than seven (7) days prior to the beginning of the hearing. The notice shall include a procedure to assure that the confidential nature of the information is preserved as required by statute.

2. Failure of any party to comply with 1) above shall be grounds to deny the party the opportunity to present evidence which is proprietary confidential business information.

3. When confidential information is used in the hearing, parties must have copies for the Commissioners, necessary staff, and the Court Reporter, in envelopes clearly marked with the nature of the contents. Any party wishing to examine the confidential material that is not subject to an order granting confidentiality shall be provided a copy in the same fashion as provided to the Commissioners, subject to execution of any appropriate protective agreement with the owner of the material.

4. Counsel and witnesses are cautioned to avoid verbalizing confidential information in such a way that would compromise the confidential information. Therefore, confidential information should be presented by written exhibit when reasonably possible to do so.

5. At the conclusion of that portion of the hearing that involves confidential information, all copies of confidential exhibits shall be returned to the proffering party. If a confidential exhibit has been admitted into evidence, the copy provided to the Court Reporter shall be retained in the Commission Clerk's confidential files.

III. POST-HEARING PROCEDURE

Rule 25-22.056(3), Florida Administrative Code, requires each party to file a post-hearing statement of issues and positions. You must include in that statement, a summary of each position of no more than 50 words, set off with asterisks. If a party's position has not changed since the issuance of the prehearing order, the post-hearing statement may simply restate the prehearing position; however, if the prehearing position is longer than 50 words, it must be reduced to no more than 50 words. The rule also provides that if a party fails to file a post-hearing statement in conformance with the rule, that party shall have waived all issues and may be dismissed from the proceeding.

A party's proposed findings of fact and conclusions of law, if any, statement of issues and positions, and brief, shall together total no more than 60 pages, and shall be filed at the same time. The prehearing officer may modify the page limit for good cause shown. Please see Rule 25-22.056, Florida Administrative Code, for other requirements pertaining to post-hearing filings.

IV. PREFILED TESTIMONY AND EXHIBITS

Testimony of all witnesses to be sponsored by the parties has been prefiled. All testimony which has been prefiled in this case will be inserted into the record as though read after the witness has taken the stand and affirmed the correctness of the testimony and associated exhibits. All testimony remains subject to appropriate objections. Each witness will have the opportunity to orally summarize his or her testimony at the time he or she takes the stand. Upon insertion of a witness' testimony, exhibits appended thereto may be marked for identification. After all parties and Staff have had the opportunity to object and cross-examine, the exhibit may be moved into the record. All other exhibits may be similarly identified and entered into the record at the appropriate time during the hearing.

Witnesses are reminded that, on cross-examination, responses to questions calling for a simple yes or no answer shall be so answered first, after which the witness may explain his or her answer.

V. ORDER OF WITNESSES

DIRECT

Witness	Appearing For	Issues Nos.
Scott W. Vierima	SSU	1 - 4
Forrest L. Ludsen	SSU	1 - 4, 6, 8 - 9
Dale G. Lock	SSU	1 - 4
William Denny	SSU	1 - 4
Rafael A. Terrero	SSU	1 - 4
Kathleen R. Colombo	Sarasota	1 - 6, 8
Dewey E. Wallace	Sarasota	4, 6, 8
Richard A. Drummond	Sarasota	7
Michael W. McWeeny	Hillsborough	1 - 8
Claude E. Boles	Hillsborough	9
Paula Zwack	Polk	1 - 9

REBUTTAL

Witness	Appearing For	Issues Nos.
Forrest L. Ludsen	SSU	1 - 4, 6, 8 - 9
William Denny	SSU	1 - 4
Rafael A. Terrero	SSU	1 - 4
Thomas Pelham	SSU	3, 9
Kathleen R. Colombo	Sarasota	1 - 6, 8
Michael W. McWeeny	Hillsborough	1 - 8

VI. BASIC POSITIONS

SSU: The Commission has exclusive regulatory jurisdiction over all of SSU's water and wastewater utility operations in the State of Florida pursuant to Section 367.171(7), Florida Statutes. Section 367.171(7), Florida Statutes, vests the Commission with "exclusive jurisdiction over all utility systems whose service transverses county boundaries." SSU is one "system" as defined by Section 367.021(11), Florida Statues, because SSU's water and wastewater utility operations throughout Florida constitute "a combination of functionally related facilities and land." In fact, SSU's facilities and land throughout Florida are operationally and administratively interdependent to the extent that SSU could not provide service to its customers absent the interrelated services and functions performed by SSU personnel and equipment across county boundaries. Further, the operational and administrative interdependence of SSU's facilities and land throughout Florida equals or exceeds the functional relationship found by the Commission in prior determinations of the existence of a single system in the cases of Jacksonville Suburban Utility Corporation and SSU. See Order No. 24335, issued April 8, 1991, and Order No. PSC-93-1162-FOF-WU, issued August 10, 1993.

POLK: SSU facilities and land in Polk County are not functionally related to any SSU facilities outside of the boundaries of Polk County. The SSU utility systems in Polk County do not provide service which transverses county boundaries. Therefore, the Commission does not have jurisdiction over SSU systems in Polk County or the State of Florida, and will not have exclusive jurisdiction over SSU systems acquired in the future.

HILLSBOROUGH: The information gathered through discovery and prefiled testimony indicates, at this point, that: SSU's facilities and land are not functionally related; the Commission does not have exclusive jurisdiction over all SSU systems in the State of Florida; and the Commission will not have exclusive jurisdiction over all SSU systems acquired in the future.

SARASOTA: Section 367.171(7), Florida Statutes, is applicable only when the service provided by a utility system crosses county boundaries. The service provided by the approximately one hundred fifty (150) water and/or wastewater systems owned by SSU throughout Florida is treated water and/or wastewater. If a particular system provides treated water or wastewater only to customers within the County in which that system is located, Section 367.171(7), Florida Statutes, does not apply. SSU's attempt to expand the clear meaning of "service" as it is used in Section 367.171(7), Florida Statutes, to include support activities such as computer programming, "800" customer service numbers, centralized billing, centralized training, capital financing and emergency lending of equipment undermines: (a) the jurisdictional prerogative set forth in Section 367.171(3), Florida Statutes, which recognizes "that every county varies from every other county"; (b) the County's legislative authority derived from Chapter 125, Florida Statutes, to provide and regulate waste and sewage collection and disposal and water supply; (c) the legislative mandate set forth in Chapter 163, Florida Statutes; and (d) the constitutionally-granted home rule power pursuant to which Sarasota County adopts ordinances and rules and regulations pertinent to the regulation of public utilities.

If the word "service" as it is used in Section 367.171(7) is given the meaning the Legislature intended, i.e., the provision of treated water or wastewater, there is no regulatory tension between any of the aforementioned statutory provisions and no conflict with ordinances promulgated by Sarasota County. Instead, all Sarasota County ordinances and relevant statutory provisions can be read together and given their intended meaning. It is a well-established axiom of statutory construction that statutes relating to the same subject matter must be given a meaning which will avoid conflict and allow each provision to have full force and effect. See City of Indian Harbour Beach v. City of Melbourne, 265 So.2d 422 (4th DCA 1972). This result can be achieved by recognizing that "service" refers solely to the provision of treated water and wastewater.

both the historical legal definition of the term and common sense. Specifically, Section 367.021(1), Florida Statutes, defines "certificate of authorization" as "a document issued by the commission authorizing a utility to provide service in a specific service area." (Emphasis supplied). Southern States' certificates of authorization, which apparently exist for each county in which the utility operates, authorize it to provide "water" and "wastewater" services. Contrary to SSU's assertion that the various ancillary support functions constitute "services" within the meaning of Section 367.171(7), Florida Statutes, none of its certificates of authorization address its provision of these ancillary activities. Rather, each certificate either approves SSU provision of water or wastewater service within the territory described. Furthermore, Hernando County is not aware of any SSU certificate of authorization granting the utility authority to provide water, wastewater or any other type of "service" transversing Hernando County's political boundary with any adjacent county.

Section 367.031, Florida Statutes, provides that each regulated utility must obtain from the Commission a certificate of authorization to "provide water or wastewater service...." (Emphasis supplied). Chapter 367, Florida Statutes, and the Commission's rules are replete with the word "service". There is not a single instance in either the statute or rules in which the word "service" refers to anything but water or wastewater service. Simply put, there are no uses of the term that connote activities such as "800" number trouble lines, computer programming, centralized billing, or meter reading.

Chapter 367, Florida Statutes and the Commission's rules require water and wastewater utilities to obtain approval of tariffs for the regulated services it provides. The Commission approves rates and charges for water and wastewater services, but no such approvals or tariffs addressing ancillary support activities.

In Hernando County, SSU operates the Spring Hill water and wastewater facilities, whose physical

facilities and customers are confined to the geographical boundaries of Hernando County. No water or wastewater lines cross Hernando County's boundaries with its neighboring counties. Thus, no SSU water or wastewater service transverses Hernando County boundaries. Absent water or wastewater service from the Spring Hill facilities transversing Hernando County's boundaries, the Commission does not have jurisdiction over the rates and charges or service provided there.

STAFF: The determination of whether SSU's facilities and land are functionally related and whether the combination of functionally related facilities and land constitute a single system must be based upon a review of testimony, exhibits and evidence presented at the hearing. If the Commission determines that SSU's facilities are functionally related and constitute a single system, the Commission would have exclusive jurisdiction over SSU's facilities throughout the State of Florida, pursuant to Section 367.171, Florida Statutes.

VII. ISSUES AND POSITIONS

ISSUE 1: Are SSU's facilities and land functionally related?

POSITIONS

SSU: Yes. (Ludsen, Vierima, Lock, Denny, Terrero)

POLK: No, SSU's systems in Polk County are not functionally related to its facilities and land in any other county. (Zwack)

HILLSBOROUGH: No. (McWeeny)

SARASOTA: No. SSU has provided no testimony to demonstrate how the provision of water and wastewater service is functionally related between systems. Instead, SSU's testimony merely explains the administrative and operational support provided by the headquarters office in Apopka. There are two reasons why these administrative activities do not establish functional relatedness. First, the headquarters office is not a "system" as contemplated by Section 367.021(11), Florida

SARASOTA: Not necessarily. There are several factors which must be considered before reaching a determination that a combination of functionally-related facilities and land constitute a single system: (1) the service provided by the system; (2) whether facilities and land are used and useful; and (3) certificates of authorization. Pursuant to Section 367.021(12), Florida Statutes, the service provided by water and wastewater systems is treated water and wastewater. Thus, only facilities and land which provide treated water and wastewater can meet the threshold requirement for a "system". This eliminates regional offices whose sole function is to provide administrative and operational support.

Second, pursuant to Section 367.021(11), Florida Statutes, to constitute a system, the facilities and land must be used and useful. The reference to "used or useful" refers to some physical component of the plant which is providing service to the service area. Because regional offices such as Apopka do not provide water and wastewater service to its customers, those offices do not fit the definition of "facilities or land, used and useful." Third, the certificates of authorization limit the geographical area in which a system can provide service. Certificates issued to SSU do not authorize service across county boundaries. (Colombo)

HERNANDO: Not necessarily. There are several factors which must be considered before reaching a determination that a combination of functionally-related facilities and land constitute a single system. First, pursuant to Section 367.021(11), Florida Statutes, the facilities and land must provide a service in order to be considered a "system." As indicated in Section 367.021(12), Florida Statutes, the service provided by water and wastewater systems is treated water and wastewater systems is treated water and wastewater. The various exemptions noted in Section 367.022, Florida Statutes, for manufacturers, public lodging establishments and landlords support this interpretation. The service each of these persons or entities is providing is treated water or wastewater, not billing, not personnel training nor

capital financing, not computer linkage, not telephone communications. It is clear that only facilities and land which provide treated water and wastewater can meet the threshold requirement for a "system." This eliminates regional offices whose sole function is to provide administrative support.

Second, pursuant to Section 367.021(11), Florida Statutes, to constitute a system, the facilities and land must be used or useful. "Used and useful" is a regulatory term which refers to the adjustment made in rate setting to properly reflect that portion of the utility's physical plant and collection and distribution systems which is being used by current customers. This includes all water pipes or lines, water-supplying equipment, or any plant in connection with the collection, treatment or reuse of water. In other words, the reference to "used and useful" in Section 367.021(11), Florida Statutes, refers to some physical component of the plant which is providing service to the service area. Because regional offices such as Apopka do not provide water and wastewater service to its customers, those offices do not fit the definition of "facilities or land, used and useful."

Third, a utility system cannot provide service without a certificate of authorization which governs the geographical area in which a system provides service. The areas of service indicated on the certificates of authorization issued to the SSU-owned systems are restricted by County boundaries because those individual systems do not provide service which crosses county boundaries. Therefore, the geographical restrictions of the certificates of authorization preclude all facilities and land wherever located from comprising a single system.

STAFF: No position pending further development of the record.

ISSUE 3: Does the Commission have exclusive jurisdiction over all SSU systems in the State of Florida pursuant to Section 367.171(7), Florida Statutes?

POSITIONS

SSU: Yes. (Ludsen, Vierima, Lock, Denny, Terrero, Pelham)

POLK: No. SSU systems do not provide water and wastewater service that transverses County boundaries. This dispute is the "hypothetical dispute" that was not addressed by the First District in Board v. Beard. (Zwack)

HILLSBOROUGH: No, an order granting jurisdiction of the Commission over SSU-owned utilities in Hillsborough County would be an unconstitutional impairment of contract. (McWeeny)

SARASOTA: No. Section 367.171(3), Florida Statutes, specifically provides that the counties enumerated therein are excluded from the provisions of Chapter 367, Florida Statutes, until such time as the Board of County Commissioners of a specific county adopts a resolution making Chapter 367, Florida Statutes, applicable to that county. Section 367.171(3), Florida Statutes, makes no exception for a utility which has numerous systems throughout the state. Rather, the only exception to a County's jurisdictional prerogative is that set forth in section 367.171(7), Florida Statutes, i.e., where a single system provides water and wastewater service across county boundaries. When this situation occurs, regulatory jurisdiction is removed from the local regulator and given to the Commission. (Colombo)

HERNANDO: No, not unless actual water or wastewater services transverse the boundaries of two or more adjacent counties would the Commission have the statutory authority to wrest jurisdiction from any of the county governments involved. In the instant case, no SSU water or wastewater facilities transverse Hernando County's borders.

STAFF: If the Commission determines that SSU's facilities and land are a functionally related system as

defined in Section 367.021(11), Florida Statutes, then the Commission has exclusive jurisdiction over all SSU systems in the State of Florida, pursuant to Section 367.171(7), Florida Statutes.

ISSUE 4: Will the Commission have exclusive jurisdiction over all SSU systems acquired in the State of Florida in the future, pursuant to Section 367.171(7), Florida Statutes?

POSITIONS

SSU: Yes. (Ludsen, Vierima, Lock, Denny, Terrero)

POLK: No. Only if SSU acquires systems that provide water and wastewater service that actually transverses County boundaries. (Zwack)

HILLSBOROUGH: No, an order granting jurisdiction of the Commission over SSU-owned utilities in Hillsborough County would be an unconstitutional impairment of contract. (McWeeny)

SARASOTA: If the Commission determines that it currently has exclusive jurisdiction over all SSU systems wherever located in the State of Florida and that determination is upheld by the courts, the Commission will have jurisdiction over all SSU systems acquired in the future. It is precisely because of this ripple effect that a determination that administrative activities suffice to remove local jurisdiction would erode the jurisdictional prerogative granted by the legislature to the individual counties. Instead of the counties choosing whether to regulate, the utilities would be choosing their own regulator through management decisions. (Colombo, Wallace)

HERNANDO: If the Commission determines that it currently has exclusive jurisdiction over all SSU systems wherever located in the State of Florida and that determination is upheld by the courts, the Commission will have jurisdiction over all SSU systems acquired in the future. It is precisely because of this ripple effect that a determination that administrative activities suffice to remove local jurisdiction would erode the jurisdictional

prerogative granted by the legislature to the individual counties. Instead of the counties choosing whether to regulate, the utilities would be choosing their own regulator through management decisions.

STAFF: If the Commission determines that SSU's facilities and land are a functionally related system as defined in Section 367.021(11), Florida Statutes, then the Commission has exclusive jurisdiction over all current SSU facilities in the State of Florida and will have exclusive jurisdiction over any system acquired in the future, provided that the acquired system is functionally related to SSU's existing facilities.

ISSUE 5: What is the meaning of the word "service" as it is used in Section 367.171(7), Florida Statutes?

POSITIONS

SSU: The "service" referred to in Section 367.171(7), Florida Statues, cannot be segregated from the utility "system" referred to in Section 367.171(7), Florida Statutes, which provides the service. Thus, if a utility "system" transverses county boundaries, the "service," inseparable from the utility "system," also transverses county boundaries. The Commission already has accepted this interpretation in previous decisions involving the systems of Jacksonville Suburban Utilities Corporation and SSU, neither of which were interconnected by pipes in the ground. The First District Court of Appeal confirmed this interpretation in Board of County Commissioners of St. Johns County v. Beard, 601 So.2d 590, 593 (Fla. 1st DCA 1992). The physical plant which the Counties focus on (treatment plant, transmission lines, etc.) are nothing but metal and mortar, incapable of providing service absent a complete functional dependence on the myriad support benefits, services and activities provided through SSU's land, facilities, equipment and employees throughout the State. SSU, as a matter of fact and a matter of law, is one utility system, not a conglomeration of separate utilities or systems. The SSU utility system transverses county

boundaries; therefore, the service provided by the system transverses county boundaries.

POLK: "Service" is not defined in Chapter 367, Florida Statutes. "Service area" is defined to mean the geographic area described in a certificate of authorization. "Certificate of Authorization" is defined as a Commission document authorizing a utility to provide service in a specific service area. Accordingly, service can only be interpreted to include the provision of water/wastewater services. SSU systems in Polk County are not authorized to provide service outside of Polk County boundaries. (Zwack)

HILLSBOROUGH: Service means water and/or wastewater service. (McWeeny)

SARASOTA: The word "service" as it is used in Section 367.171(7), Florida Statutes, means the provision of treated water and wastewater. It does not mean the provision of personnel training, computerized billing, capital financing or similar activities. The latter are components of the cost of providing service. Section 367.171(7), Florida Statutes, does not authorize the Commission to assume jurisdiction over a utility whose components of cost of service transverse county boundaries. Rather, Section 367.171(7), Florida Statutes, specifically refers to service which transverses county boundaries. If a system does not provide treated water or wastewater across county boundaries, it does not come within the purview of Section 367.171(7), Florida Statutes. (Colombo)

HERNANDO: Service, as used in Section 367.171, Florida Statutes, means water service or wastewater service, or both. SSU's water and wastewater services, as regulated by the Commission, are provided by, or through, physical lines connecting the customers with the water and wastewater treatment facilities. SSU's certificate of authorization issued by the Commission and authorizing it to provide service in Hernando County did not authorize service in adjacent counties. SSU's Spring Hill facilities in Hernando County are not physically interconnected with any facilities outside of Hernando County. SSU's

facilities in Hernando County do not provide water or wastewater service to any customers outside of Hernando County. Accordingly, the Commission cannot involuntarily take jurisdiction over the Spring Hill facilities from Hernando County.

STAFF: No position at this time.

ISSUE 6: What impact would an assumption of jurisdiction by the Commission have on the customers of any SSU-owned system in a non-jurisdictional county?

POSITIONS

SSU: This issue is entirely irrelevant to and outside the permissible scope of this proceeding. No justification exists in the pertinent provisions of Chapter 367, Florida Statutes, nor in the rules of statutory construction, for the Commission to consider the Counties' alleged parochial benefits of county regulation. The Legislature already has concluded that customers benefit from Commission regulation over systems whose service transverses county boundaries.

Nonetheless, if the Commission considers this issue, it should reject the Counties' arguments. SSU's experience with county regulation confirms that the Commission is just as capable as the counties to address community specific environmental or customer service concerns. Every SSU customer who testified at the customer hearing held in Sarasota County for Docket No. 930880-WS said they would prefer Commission jurisdiction over SSU, as stated by Mr. Ludsen in his prefiled rebuttal testimony. In addition, the ability of the Office of Public Counsel to represent customers is not in any way diminished by Commission jurisdiction. Overall, SSU's customers benefit from Commission jurisdiction because the inefficiency, unnecessary expense, and duplication inherent in overlapping county regulation are avoided.

Finally, SSU's statewide uniform rates, conservation rates and the impact of this proceeding on ratesetting generally are irrelevant

to this proceeding. Nonetheless, the Commission is just as capable as the Counties, if not more so, to set effective conservation rates and uniform rates will facilitate implementation of conservation rates with the largest statewide impact. (Ludsen).

POLK: Customers in Polk County would be subject to higher rates because uniform rates do not consider the cost of providing service relative to other customers in the state. Polk County customers would, in effect, subsidize customers in other areas in the state where cost of providing service is higher. (Zwack)

HILLSBOROUGH: The divesting of County regulation over franchise utility systems located in nonjurisdictional counties would result a diminution of the counties' ability to respond to local concerns such as the critical water shortage situation in Hillsborough County. In addition, local elected officials would be rendered helpless in responding to problems emanating from franchise utility systems located within their county. Also, the respective County Commissions would not be able to impose more stringent regulation of franchised utilities within their Counties than the Commission exercises; customers of investor owned utilities in nonjurisdictional counties would be subject to uniform rates which may not be in the best interests of the customers; the Counties would lose control of their growth management process as it relates to water and wastewater activities and Hillsborough County's stated goal of eliminating water and wastewater franchises by the year 2010 would be frustrated. (McWeeny)

SARASOTA: With the removal of local regulation, customers lose immediate response to customer complaints, consideration of site-specific environmental problems such as odor and water quality, and the level of scrutiny and political accountability inherent in smaller geographical areas. Further, now that the Commission has approved statewide rates for customers of systems owned by SSU, local public policy considerations would not be possible or practical at the state level where the Office of Public Counsel is responsible for representing the

customers of over one hundred fifty systems with divergent problems. (Colombo, Wallace)

HERNANDO: With the removal of local regulation, customers lose immediate response to customer complaints, consideration of site-specific environmental problems such as odor and water quality, and the level of scrutiny and political accountability inherent in smaller geographical areas. Further, now that the Commission has approved statewide rates for customers of systems owned by SSU, local public policy considerations would not be possible or practical at the state level where the Office of Public Counsel is responsible for representing the customers of over one hundred fifty systems with divergent problems.

STAFF: No position.

ISSUE 7: Would an assumption of jurisdiction by the Commission over any current or future SSU-owned system in non-jurisdictional counties conflict with any constitutionally-granted charter or home rule powers, or any statutory provisions?

POSITIONS

SSU: This issue is entirely irrelevant to and outside the permissible scope of this proceeding. No justification exists in the pertinent provisions of Chapter 367, Florida Statutes, nor in the rules of statutory construction, for the Commission to consider the Counties' alleged conflict with other provisions of Florida law. Moreover, the Commission is without jurisdiction to interpret or enforce any allegedly conflicting provision of Florida law.

However, if the Commission considers this issue, is should reject the Counties' arguments. No conflict will arise with any other provision of Florida law if the Commission asserts jurisdiction over SSU pursuant to Section 367.171(7), Florida Statutes. The Commission's authority to assert jurisdiction pursuant to Section 367.171(7), Florida Statutes, exists notwithstanding any grant of authority to a county in Section 367.171(3), Florida Statutes.

Further, Section 367.011(4), Florida Statutes, states, "This Chapter shall supersede all other laws on the same subject, and subsequent inconsistent laws shall supersede this chapter only to the extent that they do so by express reference." Some of the "other laws" superseded by Chapter 367, Florida Statutes, include Section 125.01, Florida Statutes, and Chapter 67-2064, Laws of Florida, statutes relied on by the counties to purportedly provide independent authority to regulate SSU. The counties disregard the limitation in Section 125.01(1), Florida Statutes, that county governments may exercise the powers enumerated therein only "[t]o the extent no inconsistent with general or special law." Sarasota and Hillsborough Counties also claim authority to regulate by virtue of ordinances passed pursuant to Article VII, Section 1(g). Yet, Article VII, Section 1(g), provides that counties operating under county charters "shall have all powers of local self-government not inconsistent with general law." No conflict exists with Chapter 163, Florida Statues, either. Section 163.3211, Florida Statutes, specifically states that "[n]othing in this act is intended to withdraw or diminish any legal powers or responsibilities of state agencies . . . ." Also, please refer to SSU's position on the issue below regarding growth management and concurrency.

POLK: Yes. (Zwack)

HILLSBOROUGH: Yes. Home Rule Charter Counties have been vested by the legislature with the authority to promulgate ordinances, rules and regulations for special purposes which do not conflict with general or specific law. Therefore, Charter counties have the authority to enact franchise ordinances which vests the County Board of County Commissioners with the authority to regulate franchised utilities within their borders. (McWeeny)

SARASOTA: Yes. Home rule charter counties have the authority to promulgate ordinances, rules and regulations which do not conflict with general or specific laws. Pursuant to this general authority, Sarasota County has adopted Ordinance No. 83-48, as amended, which grants authority to the Board of County

Commissioners to regulate all public utilities located within Sarasota County which provide service within county boundaries. The authority set forth in Ordinance No. 83-48 was derived from Chapter 67-2064, Laws of Florida, which specifically carved out the regulatory authority for Sarasota County. An interpretation of Section 367.171(7), Florida Statutes, granting the Commission jurisdiction over any utility system whose administrative activities cross county boundaries would usurp the authority to regulate originally granted to Sarasota County by Special Law, needlessly conflict with the relevant public utility ordinances, and render Section 367.171(3), Florida Statutes, a nullity.

Further, the loss of local regulatory control over public utilities within a county also includes the loss of the county's right to grant franchise area expansions, franchise transfers and to make other service area decisions. This loss of authority undermines the legislative mandate of Chapter 163, Florida Statutes, which requires counties to adopt comprehensive plans that include the provision of potable water and sanitary sewer. This result could be avoided by recognizing that Section 367.171(7), Florida Statutes, is operative only when a water or wastewater system located in Sarasota County provides treated water or wastewater across county boundaries. (Drummond)

HERNANDO: Home rule charter counties have the authority to promulgate ordinances, rules and regulations which do not conflict with general or specific laws. An interpretation of Section 367.171(7), Florida Statutes, granting the Commission jurisdiction over any utility system whose administrative activities cross county boundaries would usurp the authority granted to nonjurisdictional counties by other prior laws.

Further, the loss of local regulatory control over public utilities within a county also includes the loss of the county's right to grant franchise area expansions, franchise transfers and to make other service area decisions. This loss of authority undermines the legislative mandate of Chapter 163, Florida Statutes, which requires counties to adopt

comprehensive plans that include the provision of potable water and sanitary sewer. This result could be avoided by recognizing that Section 367.171(7), Florida Statutes, is operative only when a water or wastewater system located in a nonjurisdictional county provides treated water or wastewater across county boundaries.

STAFF: No position.

ISSUE 8: Will regulatory inefficiencies result if non-jurisdictional counties retain jurisdiction over current or future SSU-owned systems which provide water and wastewater service solely within those counties?

POSITIONS

SSU: SSU does not assent to the issue as framed, which incorporates the counties' position. SSU's service transverses county boundaries because its system transverses county boundaries. Further, this issue is entirely irrelevant to and outside the permissible scope of this proceeding. No justification exists in the pertinent provisions of Chapter 367, Florida Statutes, or in the rules of statutory construction for the Commission to make a determination regarding this issue. The legislature already has conclusively decided that the Commission has "exclusive jurisdiction over all utility systems whose service transverses county boundaries." Section 367.171(7), Florida Statutes. The Commission has recognized that in enacting Section 367.171(7), Florida Statues, the Legislature intended to avoid the inefficiency, unnecessary expense, and duplication inherent in overlapping county regulation of a cross-county system. See Order No. 22459, issued January 24, 1990, and Order No. 22787, issued April 9, 1990, in Docket No. 891190-WS; Order No. 24335, issued April 8, 1991, in Docket No. 910078-WS; and Order No. PSC-93-1162-FOF-WU, issued August 10, 1993, in Docket No. 930108-WS. Therefore, since the Legislative intent is so clearly evinced by the plain meaning of Section 367.171(7), Florida Statutes, and the Commission already has recognized

that clear intent, a determination on this issue is immaterial as a matter of law.

However, if the Commission considers this issue, it should find that there is in reality, as well as in theory, inefficiency, unnecessary expense and duplication in overlapping county regulation as documented in the prefiled rebuttal testimony of Mr. Ludsen. Overall, SSU's customers benefit from Commission jurisdiction because the ills which the Legislature sought to avoid are avoided under the Commission's jurisdiction. (Ludsen).

POLK: No. In fact, Polk County recognizes an appropriate allocation of administrative costs in establishing rates for the SSU systems in Polk County. (Zwack)

HILLSBOROUGH: No. Hillsborough County has enacted Ordinance 75-2, as amended, which is the Hillsborough County Franchise Ordinance. The Franchise Ordinance provides the framework for the regulation of franchises located within Hillsborough County. Many of the provisions of the Hillsborough county Franchise Ordinance closely parallel provisions contained in Section 367, Florida Statutes. In addition, Hillsborough County maintains staff who are charged with the responsibility of regulating franchises. (McWeeny)

SARASOTA: Regulatory inefficiencies would not result because the regulatory process in Sarasota County closely parallels that of the Commission. Sarasota County governing ordinances and rules and regulations are more restrictive in a few areas, but not to the point of creating "regulatory inefficiencies", a concern specifically raised by SSU. (Colombo, Wallace)

HERNANDO: Regulatory inefficiencies would not result because the regulatory process in Hernando County closely parallels that of the Commission. Hernando County governing ordinances and rules and regulations are more restrictive in a few areas, but not to the point of creating "regulatory inefficiencies", a concern specifically raised by SSU.

STAFF: No position.

ISSUE 9: Would an assumption of jurisdiction by the Commission over SSU-owned systems in non-jurisdictional counties impair those counties' abilities to determine and implement growth management policies and decisions?

POSITIONS

SSU: The growth management arguments of the Counties are unfounded. Regulatory authority over utility franchises has no impact on growth management or concurrency requirements. Developers must satisfy concurrency requirements regardless of the identity of the owner of the utility or the regulator. The local governments of Florida can and have adequately planned for growth and adequately insured concurrency in those instances where the Commission regulates utilities within the local governments' planning control.

In addition, Hillsborough and Sarasota Counties, by their own admission assert that their utility acquisition programs have utility regulation as their means and growth management as their reputed ends. Hernando County officials also admit an interest in acquiring SSU assets. SSU believes that these admissions highlight the counties' real interest in utility regulation: financial well being of County-owned utilities. Thus, the motivation or the counties to regulate in the first instance represents an irreconcilable conflict of interest which makes it impossible for any regulated utility to receive fair treatment from its regulator. (Pelham, Ludsen)

POLK: Yes. (Zwack)

HILLSBOROUGH: Yes. The counties would not have the ability to control where new utility franchises are granted or the ability to deny renewal of existing franchises. In addition, in some cases nonjurisdictional counties have provided mechanisms for transfer or purchase of utility assets. If Commission jurisdiction is extended to these counties existing franchise agreements may be rendered unenforceable. (Boles)

Witness	For	I.D.	Description
Ludsen	SSU	FLL-3	SSU Location Map Showing Facilities, Regions, Offices, and Water Management District
Ludsen	SSU	FLL-4	Cross County Labor
Ludsen	SSU	FLL-5	Areas Covered by SSU's Customer Service Offices
Ludsen	SSU	FLL-6	SSU Location Map Showing Service Areas with Meters read by Operations Personnel
Ludsen	SSU	FLL-7	SSU Location Map Showing Service Areas with Meters read by Meter Readers
Ludsen	SSU	FLL-8	Charlotte County Gives The Commission Back Jurisdiction
Vierima	SSU	SWV-1	CoBank Letter re: Savings from Consolidated Financing
Vierima	SSU	SWV-2	CoBank Brochure for NAWC Loan Program
Lock	SSU	DGL-1	Schedule of Training Events
Denny	SSU	WDD-1	Area Supervisors and Operators Base of Operations
Terrero	SSU	RAT-1	Index to Operator Training Workshop Notebook
McWeeny	Hillsborough	MWM-1	SSU/County rate comparison
Zwack	Polk	PMZ-1	Copy of Franchise Agreement between Polk County and SSU Orange Hill and Sugar Creek
Zwack	Polk	PMZ-2	Copy of Franchise Agreement between Polk County and SSU Gibsonia Estates

Witness	For	I.D.	Description
Zwack	Polk	PMZ-3	Chart comparing SSU uniform rates to Polk County SSU Franchise rates

REBUTTAL

Witness	For	I.D.	Description
Ludsen	SSU	FLL-9	Letter of Hillsborough County Franchise Coordinator, Kay McCormick, to SSU dated August 29, 1994
Denny	SSU	WDD-2	Safety and Training Classes Conducted by SSU in 1993 and 1994
Terrero	SSU	RAT-2	Rules Tracking Lists and Employee Assignments
Colombo	Sarasota	KRC-1	Franchise agreement for Venice Gardens Utility Corporation dated December 8, 1980; Resolution No. 87-190, Venice Gardens Utility Corporation transfer water and sewer franchise

SSU has requested that the Commission take official notice of the following:

1) Board of County Commissioners of St. Johns County v. Beard, 601 So.2d 590 (Fla. 1st DCA 1992);

2) Order No. 24335, issued April 8, 1991, in Docket No. 910078-WS, In re: Petition for Declaratory Statement Relating to Jurisdiction of the Florida Public Service Commission over Jacksonville Suburban Utilities Corporation in Duval, Nassau, and St. Johns Counties;

3) Order No. PSC-93-1162-FOF-WU, issued August 10, 1993, in Docket No. 930108-WU, In Re: Southern States Utilities, Inc.'s Petition for a Declaratory Statement Regarding

Commission Jurisdiction Over its Water Facilities in St. Johns County;

4) Order No. 22459, issued January 24, 1990, and Order No. 22787, issued April 9, 1990, in Docket No. 891190-WS, In re: Petition of General Development Utilities, Inc., for Declaratory Statement Concerning Regulatory Jurisdiction Over its Water and Sewer System in DeSoto, Charlotte, and Sarasota Counties;

5) Order No. 22847, issued April 23, 1990, in Docket No. 890459-WU, In re: Objection to Notice of Conrock Utility Company of Intent to Apply for a Water Certificate in Hernando County; and

6) Order No. PSC-92-0104-FOF-WS, issued March 27, 1992, in Docket No. 910114-WU, In re: Application of East Central Florida Services, Inc., for an Original Certificate in Brevard, Orange, and Osceola Counties;

Sarasota County has requested that the Commission take official notice of:

7) Chapter 67-2064, Laws of Florida; and

8) Sarasota County Ordinance No. 83-48, as amended.

Polk County has requested that the Commission take official notice of:

9) Polk County Ordinance No. 82-11, as amended; and

10) Relevant portions of the Polk County Comprehensive Plan.

Hillsborough County has requested that the Commission take official notice of:

11) The Hillsborough County Hershel Heights Water Franchise, dated June 18, 1990, as recorded in the official records of Hillsborough County at OR Book 6650, page 1694;

12) Utility Franchise granted by the Board of County Commissioners of Hillsborough County to Joe Lackey Construction, Inc., dated June 21, 1972, as recorded in the official records of Hillsborough County at OR Book 2589;

13) Water and Sewer Franchise issued under the provisions of Chapter 59-1352, Laws of Florida, Acts of 1959, as amended by

the Board of County Commissioners of Hillsborough County to Seaboard Utilities Corporation, dated July 19, 1965; and

14) Hillsborough County Ordinance No. 89-28.

Parties and Staff reserve the right to identify additional exhibits for the purpose of cross-examination.

IX. RULINGS

At the prehearing conference, SSU moved for leave for the parties to be allowed to make opening statements at the hearing of no more than five minutes each. All other parties concurred. SSU's motion is, therefore, granted.

SSU also moved to strike the testimony of Polk County witness Paula Zwack on the basis that Polk County failed to timely file a prehearing statement. Polk County admitted that it failed to timely file a prehearing statement and apologized for its error. However, Polk County pointed out that its failure did not prejudice SSU. SSU, for its part, agreed that Polk County's failure did not prejudice it. Although Polk County's tardiness in this and other filings is troubling, in consideration of the fact that no prejudice attached to its failure to timely file a prehearing statement, SSU's motion to strike Ms. Zwack's testimony is denied.

SSU also moved to strike Issue 5 on the basis that this case is strictly a matter of statutory interpretation, that the Court has already interpreted Section 367.171, Florida Statutes, in Board v. Beard, and that there is, therefore, no reason to break out the definition of "service" into a separate issue. The counties argued that, since their definition of "service" differs from SSU's definition of "service", the matter is at issue and should be considered by the Commission. Although this matter is related to Issue No. 3, the Prehearing Officer believes that this is a pivotal issue to the counties and, therefore, should be separately identified. SSU's motion to strike is, therefore, denied.

Next, SSU moved to strike Issue 6 on the ground that it is not relevant to the Commission's jurisdictional determination. The counties contend, essentially, that the Commission should not make its jurisdictional determination in a "vacuum" and that Issue No. 6 is a policy concern that we should consider when making such a determination. Since this is an investigation, and one in which we have invited the counties to participate, we should allow relatively broad latitude. To the extent that this policy consideration is relevant to the underlying proceeding, there is no

leave for the parties to make opening statements at the hearing, of no more than five minutes each, is granted. It is further

ORDERED that the motion by Southern States Utilities, Inc. to strike the prefiled testimony of Paula Zwack is denied, for the reasons set forth in the body of this Order. It is further

ORDERED that the motions by Southern States Utilities, Inc. to strike Issues 5 through 9 are denied, for the reasons set forth in the body of this Order. It is further

ORDERED that this Prehearing Order shall govern the conduct of these proceedings as set forth above unless modified by the Commission.

By ORDER of Commissioner Julia L. Johnson, as Prehearing Officer, this 10th day of January, 1995.

JULIA L. JOHNSON, Commissioner and
Prehearing Officer

(S E A L)

RJP

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.

the Board of County Commissioners of Hillsborough County to Seaboard Utilities Corporation, dated July 19, 1965; and

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Parties and Staff reserve the right to identify additional exhibits for the purpose of cross-examination.

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Next, SSU moved to strike Issue 6 on the ground that it is not relevant to the Commission's jurisdictional determination. The counties contend, essentially, that the Commission should not make its jurisdictional determination in a "vacuum" and that Issue No. 6 is a policy concern that we should consider when making such a determination. Since this is an investigation, and one in which we have invited the counties to participate, we should allow relatively broad latitude. To the extent that this policy consideration is relevant to the underlying proceeding, there is no

harm in identifying the counties' concerns as a separate issue. SSU's motion to strike is, accordingly, denied.

SSU also moved to strike Issue 7 on the basis that the Commission does not have the authority to interpret statutes, other than those it specifically administers, or constitutional provisions. The counties argued that the issue is relevant to this proceeding and that the Commission, sitting as hearing officers, should have the authority to make an initial determination whether an assumption of jurisdiction is consistent with other law. Upon consideration, it does not appear that this issue would prejudice any of the parties, and may serve to aid the Commission in sorting through the various legal and policy concerns. Moreover, once resolved, this issue may provide guidance to the counties. SSU's motion to strike this issue is, therefore, denied.

Next, SSU moved to strike Issue 8 on the ground that it is irrelevant to the Commission's ultimate jurisdictional determination. The counties disagreed and, in support of their argument, cited SSU's own claim that the purpose of Section 367.171(7), Florida Statutes, was to resolve regulatory inefficiencies. According to the counties, the purpose of this issue is to demonstrate that it is not necessary to assume jurisdiction over the systems at issue in this proceeding in order to resolve these inefficiencies. As noted above, this is an investigation, and the Prehearing Officer believes that wide latitude should be granted to the parties. To the extent that this matter is relevant to our ultimate determination, it should be considered. Accordingly, SSU's motion to strike is denied.

SSU also moved to strike Issue 9 on the basis of relevance. The counties argue that the issue is relevant to policy concerns that should be considered by the Commission. Again, this is an investigation. Allowing this issue to stand will not prejudice any of the parties. To the extent that this matter is relevant to our ultimate determination, it should be considered. Accordingly, SSU's motion to strike is denied.

Finally, SSU made an oral motion for reconsideration of Order No. PSC-94-1520-PCO-WS, issued December 9, 1994, to the extent that it allowed Polk County to make legal argument in its post-hearing brief. However, SSU thereafter agreed to submit its motion in written form. No ruling was therefore made.

It is therefore,

ORDERED by Commissioner Julia L. Johnson, as Prehearing Officer, that the motion by Southern States Utilities, Inc. for