BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for approval of transfer of Certificates 187-W and 131-S in Citrus County from TWIN COUNTY UTILITY COMPANY to SOUTHERN STATES UTILITIES, INC.	) DOCKET NO. 881339-WS) ORDER NO. 23091) ISSUED: 6-18-90	

The following Commissioners participated in the disposition of this matter:

THOMAS M. BEARD
BETTY EASLEY

ORDER ACCEPTING AMENDMENT TO DEVELOPER AGREEMENT, REVIVING ORDER NO. 21631 AND DECLARING IT TO BE FINAL AND EFFECTIVE

BY THE COMMISSION:

Background

By Order No. 21631, issued August 2, 1989, this Commission approved the transfer of Certificates Nos. 187-W and 131-S from Twin County Utility Company (Twin County) to Southern States Utilities, Inc. (Southern States). In addition, by Order No. 21631, we proposed to deny certain portions of a developer agreement between Southern States and Punta Gorda Developers, Inc. (Punta Gorda), and to require Southern States to file an amended developer agreement.

On August 21, 1989, Southern States and Punta Gorda, on behalf of Twin County, filed a protest to Order No. 21631, insofar as it related to the developer agreement. Pursuant to their protest, this case was set for an administrative hearing on March 14, 1990.

On February 22, 1990, Southern States and Punta Gorda submitted an amended developer agreement to the Staff of this Commission (Staff). Staff reviewed the amended agreement and, by letter dated March 1, 1990, identified a number of concerns regarding the agreement. Southern States and Punta Gorda responded to Staff's concerns by letter dated March 5, 1990.

On March 12, 1990, Southern States and Twin County filed a motion for continuance, which was granted by the Prehearing Officer, with the assent of the Chairman of this Commission, by

Order No. 22714, issued March 20, 1990. On March 28, 1990, Southern States and Punta Gorda filed an executed copy of the amended developer agreement. The agreement, as filed, is identical to the draft agreement submitted February 22, 1990. Accordingly, the specific amendments, along with our reservations and the parties' responses to those reservations, are discussed below.

Spray Effluent on Golf Course

In the original developer's agreement, the parties agreed that if Punta Gorda built a golf course at any time in the future, it would make the golf course available to receive treated effluent at no cost to either party. By Order No. 21631, we rejected that provision and stated that the appropriate time to address this matter is after a golf course has been constructed, based upon the circumstances existing at that time.

Paragraph 3 of the amended developer agreement provides that if this Commission requires Southern States to charge Punta Gorda for effluent, Southern States will impute revenue on its books rather than collect the charge. However, Paragraph 3 also states that if Southern States cannot impute the revenue, but in fact collects the charge, Punta Gorda may charge a fee for Southern States' use of the golf course for effluent disposal.

We have no real problem with this paragraph of the amended agreement. However, we believe that the issue of whether any fee paid by Southern States would be allowed as a utility expense is more appropriately addressed when a golf course is built or in some future rate proceeding involving this system, based upon the circumstances existing at that time. In its letter of March 5, 1990, Southern States agrees that this is the appropriate way to treat this fee.

System Capacity Charges and Gross-up of Contributions-in-aid-of-construction (CIAC)

According to the original developer agreement, Southern States agreed to charge Punta Gorda the lesser of the system capacity charge in the utility's tariff, or 25 percent of the actual cost of any central plant facilities and improvements constructed to meet the utility's obligation to serve. By

Order No. 21631, we denied this provision and advised Southern States that it must collect the approved service availability charges in effect at the time of connection.

The original developer agreement also provided that Southern States would not collect any taxes on CIAC from Punta Gorda, but would collect it from any future assignees of Punta Gorda. By Order No. 21631, we stated that this provision was discriminatory since, if the utility's collection of taxes on CIAC is appropriate, they should be collected from all customers.

During the pendency of this proceeding, Staff and the parties to the developer agreement reached a verbal stipulation whereby the utility may elect not to collect the full service availability charges or taxes on CIAC from Punta Gorda. However, Southern States agreed to book these items, for regulatory accounting purposes, as if collected in full.

Notwithstanding the above, Paragraph 5 of the amended developer agreement appears to condition this booking treatment upon our issuing an order or taking some other action to require the utility to collect a charge contained in its tariff. It was not our intent to issue an order or to require Staff to impute the CIAC or gross-up in a future rate proceeding, but rather, that Southern States keep the proper amounts on its books. Apparently, Southern States agrees with our interpretation because, in its letter of March 5, 1990, it stated that "[t]he parties do not presume that the Public Service Commission would issue an order requiring specific, actual collection of the tariff charge, so long as Southern States booked the difference between the tariff charge and the amount collected."

Paragraph 5 of the amended developer agreement also provides that if Southern States collects an amount of CIAC in excess of that agreed to in the original developer agreement, Punta Gorda may charge Southern States, in consideration for the execution of this amendment, a fee which shall not exceed the amount Punta Gorda is required to pay in excess of that provided for in the agreement. The purpose of this provision is apparently to reimburse Punta Gorda if the collection of service availability charges are required by this Commission. Again, we have no real objection to this provision, as long as it is clear that any fees paid by Southern States pursuant to

this provision shall not be reflected on its books and records for regulatory purposes and shall not be recovered through rates and charges to its ratepayers.

Revival of Order No. 21631

Finally, since Southern States and Punta Gorda have, by their filing of the amended developer agreement, effectively withdrawn their objections to Order No. 21631, we find it appropriate to revive that Order and declare it to be final and effective.

It is, therefore,

ORDERED by the Florida Public Service Commission that the amendment to the developer agreement, filed March 28, 1990, is hereby accepted, subject to the conditions discussed in the body of this Order. It is further

ORDERED that Order No. 21631 is hereby revived and declared to be final and effective. It is further

ORDERED that Docket No. 881339-WS be and is hereby closed.

By ORDER of the Florida Public Service Commission this 18th day of JUNE, 1990.

STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

RJP

by: Kay Flynn
Chief, Bureau of Records

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 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.