

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Southern States) DOCKET NO. 930108-WU
Utilities, Inc.'s Petition for a) ORDER NO. PSC-93-1162-FOF-WU
Declaratory Statement Regarding) ISSUED: August 10, 1993
Commission Jurisdiction Over its)
Water Facilities in St. Johns)
County.)
_____)

The following Commissioners participated in the disposition of this matter:

J. TERRY DEASON, Chairman
THOMAS M. BEARD
SUSAN F. CLARK
JULIA L. JOHNSON
LUIS J. LAUREDO

ORDER GRANTING PETITION FOR DECLARATORY STATEMENT

BY THE COMMISSION:

Southern States Utilities, Inc., (Southern States) filed a Petition for Declaratory Statement on January 27, 1993, asking whether the Commission has exclusive jurisdiction over its water facilities in St. Johns County pursuant to Section 367.171(7), Florida Statutes. Notice of receipt of the petition was published in the Florida Administrative Weekly on February 26, 1993. On April 26, 1993, Southern States filed an amended petition, providing additional facts about the operation of its St. Johns County facilities.

Southern States' amended petition meets the threshold requirements of Section 120.565, Florida Statutes and Rule 25-22.021, Florida Administrative Code. It has shown a genuine question or doubt about the applicability of Section 367.171(7), and it has shown a need for a declaratory statement to resolve the question. The facts presented in the amended petition are not disputed.

Southern States provides water utility service in St. Johns County from two separate water utility facilities, Palm Valley and Remington Forest. Since 1989, these facilities have been regulated by the St. Johns County Water and Sewer Authority pursuant to a resolution of the Board of County Commissioners of St. Johns County. According to the petition, the facilities consist of land,

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and the treatment and distribution plant. All administrative and operational services are provided primarily through Southern States' Woodmere facility in Duval County, which is under the jurisdiction of this Commission, and also through employees and facilities in Putnam, Volusia and Orange Counties.

Section 367.171(7), Florida Statutes (1991), provides, in pertinent part:

Notwithstanding anything in this section to the contrary, the commission shall have exclusive jurisdiction over all utility systems whose service transverses county boundaries, whether the counties involved are jurisdictional or nonjurisdictional, except for utility systems that are subject to, and remain subject to, inter-local utility agreements in effect as of January 1, 1991, that create a single governmental authority to regulate the utility systems whose service transverses county boundaries,

(Emphasis added). Southern States asserts that it is not aware of any applicable interlocal utility agreement in effect. Thus, the Commission must determine if Palm Valley and Remington Forest water utilities are part of a utility system whose service transverses county boundaries.

Physical connection of the facilities is not required by the statute for the utility systems' service to transverse county boundaries. Board of County Commissioners of St. Johns County v. Beard, 601 So. 2d 590 (Fla. 1st DCA 1992) (affirming Commission Order No. 24335.) "System" is defined in Section 367.021(11), Florida Statutes, as:

facilities and land used or useful in providing service and, upon a finding by the commission, may include a combination of functionally related facilities and land.

To make this determination, we must consider the administrative and operational interrelationship of Southern States' facilities and land.

The Palm Valley and Remington Forest facilities in St. Johns County consist solely of land and the treatment and distribution plant--no offices or personnel are located at either of the two sites. All services to these facilities are provided by Southern States' facilities in Duval, Putnam, Volusia and ultimately Orange Counties. St. Johns County is contiguous to Duval County and Putnam County.

The central office for operations conducted in St. Johns County is at the Woodmere facility (PSC Certificate No. 124-S) in Duval County, which is a 25-minute drive from Palm Valley and a 35-minute drive from Remington Forest. Personnel who provide operations and maintenance services to the St. Johns County water plants report to the Woodmere office daily and consider that facility their home plant, traveling from there to the facilities in St. Johns County.

Meter readers also are based in Duval County and travel to each of the St. Johns County plants two days each month to read the meters. All parts and supplies needed for repair and maintenance of distribution plant are stored at Woodmere in Duval County and must be transported from Duval County when needed in St. Johns County. Testing samples collected at the St. Johns County facilities are transported back to Duval County to be tested at the laboratory located in Jacksonville. Palm Valley and Remington Forest customers are served by customer service representatives located in the Duval County Woodmere office who also write service orders and dispatch the necessary operations personnel, usually from Woodmere in Duval County, and occasionally from Putnam County, to the site to handle the problem. Receipt of customer payments, customer deposits, and collections on delinquent accounts are also handled in Duval County.

The local administrative personnel for the St. Johns County plants are located in both Duval and Volusia Counties. In addition, all of Southern States facilities, including the two in St. Johns County, are ultimately managed and operated from the central office in Apopka, Orange County, Florida. Functions and services such as budgeting, personnel management, purchasing, billing and collection, strategic and operational planning, accounting, engineering, and environmental permitting and compliance are performed on a company-wide basis by departments and personnel located in the central office in Orange County. These company-wide relationships between facilities in noncontiguous

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counties are not necessary, however, to establish the Commission's jurisdiction.

We conclude that the administrative and operational interrelationship between the facilities in St. Johns County and Duval County adequately supports a finding by the Commission that they constitute a combination of functionally related facilities--a "system". Because the service provided by this system transverses county boundaries, we declare that the Commission has exclusive jurisdiction over Southern States Utilities, Inc.'s water facilities in St. John's County pursuant to Section 367.171(7), Florida Statutes.


Based upon the foregoing, it is

ORDERED by the Florida Public Service Commission that the Petition for Declaratory Statement filed by Southern States Utilities, Inc., is granted. It is further

ORDERED by the Florida Public Service Commission that the water facilities owned and operated by Southern States in St. Johns County are subject to the exclusive jurisdiction of this Commission pursuant to Section 367.171(7), Florida Statutes.

ORDERED by the Florida Public Service Commission that this docket be closed upon issuance of the order and expiration of the time provided for reconsideration.

By ORDER of the Florida Public Service Commission this 10th day of August, 1993.



STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

CHAIRMAN DEASON DISSENTED AS FOLLOWS:

I voted against issuing a declaratory statement in this case because I do not believe that a declaratory statement is an appropriate way to afford an opportunity for potentially affected parties to be heard. Normally, intervention is not allowed or contemplated in declaratory statement proceedings. In rare circumstances where it is allowed it is usually for the purpose of providing argument on applicable law or policy and not for purposes of raising or contesting factual issues.

The key to the Commission's determination in this case is whether the systems in the counties at issue here are functionally related. The statutory provisions to apply are Sections 367.171(7) and 367.021(11), Florida Statutes. The first provides that:

Notwithstanding anything in this section to the contrary, the Commission shall have exclusive jurisdiction over all utility systems whose service transverse county boundaries, whether the counties involved are jurisdictional or nonjurisdictional, . . .

Section 367.021(11) defines the term "system" as:

facilities and land used or useful in providing service and, upon a finding by the commission, may include a combination of functionally related facilities and land.

Southern States has alleged a significant number of facts which it believes support the conclusion that the systems are functionally related. Among these are common management, centralized expense allocation, budgeting, and payroll.

It is my opinion that a problem arises in the company's petition because of the language in Section 367.021(11) which states that a system may include a combination of functionally related facilities after a finding by the Commission. My understanding of a declaratory statement proceeding is that a party with a question about his status can present an assumed set of facts, the law and policy that he feels is applicable and ask the Commission to determine whether or to what extent he can act in certain circumstances. Because the determination of whether the

Southern States' facilities in St. Johns County are functionally related is dependent upon a finding by the Commission, I do not believe that the Commission can immediately grant Southern States' petition in the manner the company would like. It is not the function of a declaratory statement proceeding for the Commission to make findings of fact where no opportunity to be heard is provided to substantially affected parties. No such opportunity to be heard was given in this case and I fear that this defect could render the Commission's decision a nullity as far as giving Southern States authority to apply Commission-approved rates and charges to customers in St. Johns County.

In a declaratory statement, the Commission assumes the validity of facts and, based on those assumptions and the applicable law, makes a determination of someone's rights obligations or responsibilities. In this process the party presenting the facts to the Commission shoulders 100 percent of the risk that the facts presented are true. A finding must be made in a 120.57 hearing. The Commission's declaratory statement rule, Rule 25-22.022, allows that the Commission may hold a hearing to dispose of a petition submitted pursuant to Section 120.565, Florida Statutes. This was not done here.

Southern States' petition does allege certain facts (as the statute requires) about the utility's "particular set of circumstances." The company does not, however, allege that the Commission has made a finding about functional relation as it applies to Southern States. I recognize that the company's petition alleges that similar circumstances were "found to be a 'combination of functionally related facilities and land' and thus a 'system' under section 367.021(11) Florida Statutes." (Amended Petition at 6). It is my view that this so-called finding has no impact on Southern States' circumstances since each finding must be situation specific under a plain reading of the statute. Moreover, for the reasons stated above I have a doubt as to the validity of the Jacksonville Suburban order (Commission Order No. 24335).

In summary, I dissent because I do not believe that the declaratory statement is the appropriate vehicle for Southern States to get the relief it desires. That relief can only come in a proceeding that affords any affected parties an opportunity to be heard on the issues. The Commission must either issue a notice of proposed agency action or hold a section 120.57 hearing. Only a finding under these circumstances will give the Commission jurisdiction over Southern States' St. Johns County facilities.

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 Civil Procedure. The notice of appeal must be in the form specified in Rule 9.900 (a), Florida Rules of Appellate Procedure.