BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for rate increase in Brevard, Charlotte/ Lee, Citrus, Clay, Duval, Highlands, Lake, Marion, Martin, Nassau, Orange, Osceola, Pasco, Putnam, Seminole, Volusia, and Washington Counties by SOUTHERN STATES UTILITIES, INC.; Collier County by MARCO SHORES UTILITIES (Deltona); Hernando County by SPRING HILL UTILITIES (Deltona); and Volusia County by DELTONA LAKES UTILITIES (Deltona)	DOCKET NO. 920199-WS FILED: December 9, 1992

CITRUS COUNTY'S BRIEF

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ISSUES

ISSUE 92: **Should SSU's final rates be uniform within counties, regions, or statewide?**

CITRUS COUNTY: Citrus County adopts the position of Cypress and Oak Villages Association that SSU's final rates should not be uniform within counties, regions, or statewide.

JURISDICTIONAL LEGAL ISSUE

ISSUE: **Does the Commission have the statutory authority to impose rates that are uniform within counties, regions or statewide, if the resulting rates are designed to recover a return on utility plant, not used and useful, in providing utility service to those customers being charged the rates, or if the resulting rates include expenses not necessary for the provisioning of the utility service to those customers being charged the rates?**

CITRUS COUNTY: No, the Commission does not have the statutory authority to impose uniform rates under the circumstances described in the above legal issue. Furthermore, the Commission does not have the legal authority to set utility rates in any manner such that any customers are forced to pay rates that provide a return on utility plant that is not used and useful in providing them the regulated utility service or pay for utility expenses that are not necessary to the utility service being provided to them. In the instant case, the maximum bill concept proposed by Southern States involves the customers of a number of geographically distinct and non-interconnected utility systems not receiving a rate reduction in order to support the revenue deficiencies of other systems. More troubling, some additional systems have had their rates increased for the sole purpose of providing a so-called "subsidy" to support the revenue deficiencies. Requiring the customers of some utility systems to support

the revenues and rates of other systems is not only bad regulatory policy, but, more importantly, illegal. As discussed below, the Commission does not have the legal authority to impose either uniform rates or maximum bills under the circumstances described in the legal issue.

DISCUSSION

There are some 127 utility systems involved in this case, the vast majority of which are non-interconnected, geographically distinct and separated. Most, if not all, evolved from various development schemes that were unrelated to each other. Customer contributions vary markedly from system to system as does the cost to serve customers of each system. The only thing most of the systems have in common is their current common ownership by Southern States.

The maximum bill concept proposed by Southern States involves making the customers of some systems provide a subsidy to other systems to make up for revenue deficiencies produced by the latter. Stated simply, one group of customers will not be paying sufficient rates to support the expenses reasonably and prudently necessary to provide their utility service and allow the utility an opportunity to earn a fair and reasonable return on the utility plant in service necessary to provide their service. Other customers will be forced to make up the difference by paying greater rates than necessary to pay for the expenses necessary to provide their service, plus provide the utility an opportunity to earn a fair and reasonable return on its investment to serve them.

It may be reasonable to allocate common plant and joint expenses to the various utility systems if the expenses are reasonable and necessary and if the allocation process is reasonable.

It is not possible, however, for the plant in service of non-interconnected utility systems to provide service to customers of other systems and, thus, to be considered used and useful for

ratemaking purposes. It is not only bad policy and unfair to attempt to make the customers of one utility system to subsidize the rates of distinct and separate systems, it is, more importantly, illegal!

The Commission, as an administrative agency, has only those powers, duties and authority conferred expressly or implied by statute and any reasonable doubt as to the existence of a particular power being exercised by the Commission must be resolved against the exercise of that power. Chapter 367, F.S. only allows the Commission to set rates which allow the recovery of the reasonable and prudent expenses necessary to the provision of the regulated service to the customers being charged the rates, plus an amount necessary to give the utility an opportunity to earn a fair and reasonable return on its prudent investment used and useful in providing utility service to the customers being charged the rates.

It is uncontroverted in the record of this case that the maximum bill rates proposed by Southern States would involve the customers of some utility systems paying a subsidy over and above what would be considered fair and reasonable rates for the service they are receiving for the sole purpose of paying the expenses and return on investment on utility plant that is providing no service to them, but to others they are joined with by the mere fortuity of their common ownership by Southern States.

Some may choose to call the transfer of revenue responsibility a "subsidy". Others may recognize it more correctly for what it truly is, which is a tax sought to be levied by the Commission to support one group of customer at the expense of another group. The Commission has no such jurisdiction to levy taxes, irrespective of whether its motives are good or not. If the Commission thinks that the prevention of rate shock to certain systems, and the ease of administration to be obtained by the utility and the Commission staff, warrant the imposition of such a subsidy or tax, it should consider going to the Florida Legislature to obtain the necessary jurisdiction. Absent such a specific

authorization, the implementation of the maximum bill concept is clearly illegal and must not be approved.

Southern States has provided the necessary data to calculate "stand-alone" rates for each of the non-interconnected systems, including the allocations of return on common plant and A&G and other joint or common expenses. The Commission should set rates for each of the distinct systems on this basis.

CONCLUSION

The Commission does not have the statutory authority to impose uniform rates under the circumstances described in the above legal issue. Furthermore, the Commission does not have the legal authority to set utility rates in any manner such that any customers are forced to pay rates that provide a return on utility plant that is not used and useful in providing them the regulated utility service or pay for utility expenses that are not necessary to the utility service being provided to them. In the instant case, the maximum bill concept proposed by Southern States involves the customers of a number of geographically distinct and non-interconnected utility systems not receiving a rate reduction in order to support the revenue deficiencies of other systems. More troubling, some additional systems have had their rates increased for the sole purpose of providing a so-called "subsidy" to support the revenue deficiencies. Requiring the customers of some utility systems to support the revenues and rates of other systems is not only bad regulatory policy, but, more importantly, illegal.

PROCEDURAL LEGAL ISSUE

ISSUE: **WAS THE CUSTOMER NOTICE IN THIS CASE SUFFICIENT TO PUT CUSTOMERS ON NOTICE THAT THEY WERE AT RISK OF HAVING TO PAY A SUBSIDY OR TAX TO SUPPORT THE UTILITY SERVICE OF CUSTOMERS OF OTHER SYSTEMS?**

CITRUS COUNTY: No. Customer notice in this case was devoid of any notice that customers were at jeopardy with respect to the maximum bill concept or other related uniform billing concepts. As such the customers, generally, and Citrus County have been denied the procedural due process that they are legally entitled to.

Respectfully submitted,

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CERTIFICATE OF SERVICE
DOCKET NO. 920199-WS

I HEREBY CERTIFY that a correct copy of the foregoing has been furnished by U.S. Mail or hand-delivery to the following parties on this 9th day of December, 1992.

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