

9

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REPLY TO:

December 17, 1992

Mr. Steve Tribble, Director
Division of Records and Reporting
Florida Public Service Commission
101 East Gaines Street
Tallahassee, Florida 32399-0850

HAND DELIVERY

Re: FPSC Docket No. 920199-WS

Dear Mr. Tribble:

Enclosed for filing in the above-referenced docket are the original and fifteen copies of Southern States' Motion to Strike New Legal Issues in Citrus County's Brief.

Please acknowledge receipt of these documents by stamping the extra copy of this letter "filed" and returning the same to me.

Thank you for your assistance with this filing.

Sincerely,

ACK _____
AFA 5 _____ *Kenneth A. Hoffman*
APP _____ Kenneth A. Hoffman
CAF _____
CAM _____
CTR _____
EAG _____
LEG 1 w/m _____
LIM 3 _____
OPC _____
RCH _____
SEC 1 _____
WAS _____
OTH _____

KAH/rl

Enclosures

DOCUMENT NUMBER-DATE

14643 DEC 17 1992

FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application of Southern States Utilities, Inc. and Deltona Utilities, Inc. for Increased Water and Wastewater Rates in Citrus, Nassau, Seminole, Osceola, Duval, Putnam, Charlotte, Lee, Lake, Orange, Marion, Volusia, Martin, Clay, Brevard, Highlands, Collier, Pasco, Hernando, and Washington Counties.

Docket No. 920199-WS
Filed: December 17, 1992

**SOUTHERN STATES' MOTION TO STRIKE
NEW LEGAL ISSUES IN CITRUS COUNTY'S BRIEF**

SOUTHERN STATES UTILITIES, INC. ("Southern States"), by and through its undersigned counsel, hereby moves to strike the "Jurisdictional Legal Issue" and "Procedural Legal Issue" raised and addressed in the Posthearing Brief filed by Citrus County. In support of its Motion, Southern States states as follows:

1. Intervenor Citrus County did not file a Prehearing Statement nor did it appear at the Prehearing Conference in this matter. Citrus County appeared and participated in portions of the final hearing.

2. On July 10, 1992, the Prehearing Officer issued Order No. PSC-92-0638-PCO-WS ("Order Establishing Procedure"). The Order Establishing Procedure provides, in pertinent part:

Any issue not raised by a party prior to the issuance of the Prehearing Order shall be waived by that party, except for cause shown. A party seeking to raise a new issue after the issuance of the Prehearing Order shall demonstrate that: it was unable to identify the issue because of the complexity of the matter; discovery or other prehearing procedures were not adequate to fully develop the issue; due diligence was exercised to

1365

DOCUMENT NUMBER-DATE

14643 DEC 17 1992

FPC-RECORDS/REPORTING

obtain facts touching on the issue; information obtained subsequent to the issuance of the prehearing order was not previously available to enable the party to identify the issue; and introduction of the issue could not be to the prejudice or surprise of any party. Specific reference shall be made to the information received, and how it enabled the party to identify the issue. [Emphasis added.]

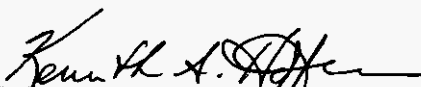
Order Establishing Procedure, at 6.

3. During the final hearing, counsel for Citrus County emphasized that he was not attempting to raise new issues which were not previously set forth in Order No. PSC-92-1265-PHO-WS issued November 4, 1992 ("Prehearing Order"). (Tr. 791.) Nonetheless, in its Posthearing Brief, Citrus County raises a "Jurisdictional Legal Issue" and "Procedural Legal Issue" which are not identified in the Prehearing Order. See copies of pages 2 and 5 of Citrus County's Brief, attached hereto as Exhibit "A".

4. Under the terms of the Order Establishing Procedure, Citrus County has waived the right to raise issues which were not previously identified in the Prehearing Order. Citrus County did not even attempt and thus failed to demonstrate that it met the above-stated requirements reflected in the Order Establishing Procedure which would permit it to raise a new issue not previously identified in the Prehearing Order.

WHEREFORE, Southern States request the Commission to enter an Order striking those portions of Citrus County's Brief which raise and address the "Jurisdictional Legal Issue" and "Procedural Legal Issue" not previously identified in the Prehearing Order.

Respectfully submitted,



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Attorneys for Applicants Southern
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Deltona Utilities, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Southern States' Motion to Strike New Legal Issues in Citrus County's Brief was furnished by U. S. Mail, this 17th day of December, 1992, to the following:

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By: 
KENNETH A. HOFFMAN, ESQ.

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

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?