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: April 6, 1993

CITRUS COUNTY'S MOTION FOR RECONSIDERATION

THE BOARD OF COUNTY COMMISSIONERS OF CITRUS COUNTY, by and through its undersigned counsel, hereby moves the Commission to reconsider its PSC Order No. 93-0423-FOF-WS, issued March 22, 1993 and as grounds states as follows:

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1. No customer of Southern States Utilities, including Citrus County and its citizens, was given fair and adequate notice he or she would be subject to the risk of statewide uniform rates in these proceedings, nor, necessarily, of the factors the PSC staff and commissioners would consider in

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authorizing uniform statewide rates to a utility which had not requested them. In ordering statewide uniform rates in this case, the PSC has knowingly deprived the customers of Southern States Utilities and the parties to this proceeding the minimum essentials of due process of law guaranteed by the U.S. and State of Florida Constitutions and required by the Florida Statutes. In short, by adopting this controversial, radical and, arguably, illegal departure from the traditional and acceptable norms of water and sewer rate regulation in the State of Florida and throughout the Nation, the PSC has effectively bushwhacked the customers of Southern States Utilities and their attorneys. In doing so, the PSC has mistakenly applied both the facts of this case and the applicable Florida laws.

(a) As is well-established, the PSC is subject to the provisions of Chapter 120, Florida Statutes, the Administrative Procedures Act ("APA"). One of the fundamental precepts of the APA was that it was to protect the due process rights of persons with substantial interests before an agency. Thorn v. Florida Real Estate Commission, 146 So.2d 907 (Fla. 2nd DCA 1962). Furthermore, proceedings conducted by an agency, such as the PSC, for the purpose of adjudicating any party's legal rights must be conducted in a quasi-judicial manner in which the basic requirements of due process are accorded and preserved. The APA contemplates that parties to such proceedings who will be affected by its outcome will be given reasonable notice of the

hearing, an opportunity to appear in person or by attorney and to be heard on issues presented for determination. Lastly, the APA contemplates that the order entered as a result of the hearings will be based upon competent and substantial evidence adduced by parties consisting of sworn testimony of witnesses and properly authenticated documents. Deel Motors, Inc. v. Department of Commerce, 252 So.2d 289 (Fla. 1st DCA 1971).

(b) The utility's minimum filing requirements did not request uniform rates and, therefore, failed to adequately inform customers of their risk of having such rates imposed upon them. Accordingly, they could not know to attend the hearing and testify in opposition of uniform statewide rates, if they so desired.

(c) Billing inserts to the customers of the utility's 127 separate and distinct water and sewer systems did not begin to inform them of the utility's proposal to have the customers of several systems subsidize the services being provided to others, let alone give them an inkling of the PSC and its staff's undisclosed plan to impose uniform statewide rates. Again, customers were denied fair and adequate notice of what was to be considered at hearing and were, thereby, denied their due process rights.

(d) The PSC's much heralded customer hearings did nothing to alert the utility's customers of the potential imposition of a radical departure in regulatory policy, which is,

and has been, viewed as controversial, at best, and illegal in some quarters. Another failure to adequately put customers on notice of which of their substantial interests were at risk before the PSC.

(e) Information distributed to the news media by the utility and the PSC was misleading, especially when considering the obvious premeditation of the PSC's effort to impose uniform statewide rates upon the customers of this utility.

(f) The decision to impose uniform statewide rates was a reversal, without any notice or opportunity to be heard, of the PSC's earlier orders discussing the concept of, and factors to be considered prior to the attempted adoption of, uniform statewide rates. Customers concerned with the adverse and unfair consequences of uniform statewide rates had a right to rely on the representations contained in the PSC's earlier orders until such time as they were given fair, legal and adequate notice the PSC was considering a reversal of policy, especially where a radical reversal with dire economic consequences was contemplated.

(g) No party to the proceeding, except the PSC staff, touted the supposed advantages of uniform statewide rates. Furthermore, and more troubling, the PSC staff, although one of its witnesses extolled the ease of administration of such rates, gave no indication, even as late as the hearing, it would

recommend in this docket the imposition of uniform statewide rates.

2. The PSC's decision to impose uniform statewide rates, even if allowed by Florida Law and properly noticed for hearing and decision, which is not the case here, was not based upon competent substantial evidence of record, as required by the APA.

(a) Staff witness Williams' testimony to the effect that imposing uniform statewide rates in this case would put the water and sewer utility on par with telephone and electric utilities is simply false and also misses the relevant point that Florida Law demands that utility customers only be charged rates that include expenses that are reasonable in amount and, more importantly, which are necessary to providing the utility service being billed for. Attempting to compare fully interconnected electric and telephone companies to non-interconnected water and sewer plants, which are scattered around this State, is so obviously comparing the proverbial "apples and oranges" that finding a more extreme example would be difficult. Electric utilities, whose rates are generally based upon the cost to serve customers, have approved rates reflecting the differing costs to serve distinct classes of customers, such as residential, commercial and industrial. Contrary to the PSC's conclusion in this case, where there are non-interconnected regulated electric utilities in this State with two or more divisions and differing costs of service, the result is separate rates. Florida Public

Utilities Company, which is regulated by the PSC and represented there by witness Cresse's firm, has geographically distinct electric divisions in Marianna and Fernandina Beach. Florida Public Utilities Company does not have uniform statewide rates for its two divisions, but, instead, has separate rates for each division reflecting the cost of service of each. Florida's telephone companies, whose rates are set more on the concept of the "value of service", are also fully interconnected (unlike Southern States' systems) and, besides, do not usually have uniform statewide rates as suggested by the PSC's order. Rather, using value of service as a primary guide, Florida's regulated telephone companies have separate and distinct rates for customer classes, such as residential and business. Furthermore, large telephone companies with geographically distinct divisions have as many as 12 separate residential charges depending upon the number of other telephones that may be called locally (value obtained) within the division.

(b) Testimony that uniform statewide rates provides rate stability and prevents rate shock is only remotely true if one is the customer of a water or sewer system receiving a subsidy by the adoption of the uniform rates. Conversely, customers of systems who have paid high initial connection fees and are, therefore, legally entitled to lower rates, receive an immediate, substantial and illegal rate shock and the destruction of the rate stability they expected and are entitled to by

contract and state law and upon which they presumably relied when purchasing their homes.

(c) Testimony that uniform statewide rates would be in the best interest of the customers because it recognizes economies of scale is obviously false and cannot be relied upon to support the adopted rate structure scheme. Economies of scale do not exist for 127 geographically distinct, non-interconnected water and sewer systems when one considers the physical water plant and sewer treatment plant necessary to serve each system. Each system is distinct and its rate base is "non-used and useful" in the legal sense in serving the customers of the other systems. While there may be economies of scale achievable from consolidating headquarters operations, billing, mailing and other centralized activities, those savings, if any, are already reflected in common and general expense accounts and do not require uniform rates to be recognized. Furthermore, whether any common and general expenses were saved by the staff audit recommendations coerced upon Southern States Utilities by the PSC staff is not known since neither the staff nor the utility could testify to either the amount of additional expense occasioned by the adoption of the staff recommendations or the supposed savings obtained from them.

(d) A curious basis for the adoption of uniform rates cited in the PSC's order is the statement attributed to witness, and former PSC commissioner, Cresse that "uniform rates would be

appropriate in the broadest sense, if the commission were seeking uniformity". While this statement possesses a certain compelling circular logic that is difficult to refute, it only describes the means to an end, while failing totally to offer a shred of legal or factual support for the result.

(e) Although clearly irrelevant to the law regulating water and sewer utility rates in Florida, staff witness Williams' testimony that uniform rates would be more simply derived, easily understood, and economically implemented contains more than a grain of truth and highlights the PSC staff workload reduction to be obtained by urging the adoption of uniform statewide rates. While the desire to reduce workload is understandable and may be compelling from the staff's perspective, it is a legally unacceptable argument for the adoption of uniform statewide rates.

3. The PSC action in the instant case may be considered nothing more than "free wheeling policy making". Agency policy, if allowable by statute, is properly established only through properly noticed rule making proceedings. MacDonald v. Division of Banking and Finance, 360 So.2d 1116 (Fla. 1st DCA 1979). Assuming, for the sake of argument, the PSC could legally impose uniform statewide rates under existing law, its attempted change of policy should have been through a properly noticed rule making hearing held for the specific purpose of considering the PSC's desire to implement such rates. Such a hearing would, first,

provide adequate notice to all parties, which is painfully absent here. Secondly, it would allow other substantially affected parties, such as other utility systems (be they potentially large acquiring utilities or merely potential acquisition targets) and their customers to provide input on the facts and law on a policy, which the PSC presumably thinks is now a done deal.

4. The PSC has fundamentally misunderstood its statutory authority with respect to setting uniform statewide rates for non-interconnected utility systems, whose only association is by the current, and often recently acquired, common ownership by Southern States Utilities. The PSC clearly lacks the statutory jurisdiction to impose uniform statewide rates in this case and its attempted analogy of this water and sewer case to the widely accepted standards for setting the rates of regulated electric and telephone companies is inappropriate and disingenuous as discussed above.

(a) It is clear from the testimony of utility witnesses that the PSC, through its staff and the artifice of an unprecedented staff management audit of a water and sewer company, coerced Southern States Utilities to undertake certain expensive projects whose primary, if not sole, purpose was to enable the utility to more easily acquire small water and sewer systems. The forced creation of a monster-sized water and sewer company poised to acquire, at the PSC's behest, smaller utilities, only addresses half of the ease of administration

problem if uniform rates are not adopted. As previously stated, the real "advantage" of these coerced expenditures, which were resisted by the utility, is the "ease of administration" that results when the common ownership of many water and sewer systems is coupled with uniform statewide rates, which, in layman's terms, equates to less work for the PSC and its staff. It should be noted that forcing capital expenditures on Southern States Utilities through the actions of its staff results in the PSC "managing" the utility. While such interference may be offensive to utility management (as was apparently the case here), its real danger to the legal ratemaking process is that it may result in the PSC "buying into" the inclusion of staff or PSC-pressured projects in a utility's rate or investment base without the critical and impartial review required both by Chapters 120 and 367, Florida Statutes. Stated another way, the PSC forcing capital expenditures on any utility can only increase the odds that the PSC will not fully and impartially examine and review those expenditures as is required by law.

(b) The clear and long-standing legal standard for ratesetting in Florida, and all states, is that the PSC can only require utility customers to pay rates including the reasonable and prudent expenses <u>necessary</u> to providing those customers with the regulated utility service being offered. It is undisputed in the present case that the uniform statewide rates include, for a number of utility systems, the expenses of other, far-distant

systems that cannot be considered necessary for the provision of utility services to those customers. On this basis alone, the uniform statewide rates are unlawful and must be eliminated.

(c) The clear and long-standing legal standard for ratesetting in Florida, and all states, with respect to return on investment allowable in utility rates is that the PSC can only require utility customers to pay rates including a fair return on the investment of the utility in property used and useful in providing service to the customers. It is undisputed in this case that the uniform statewide utility rates proposed to be charged to the customers of some of the systems in this case include a return on investment for utility plant in service located, in some cases, hundreds of miles from the customers being forced to pay rates necessary to support such plant. The systems are non-interconnected and it cannot be credibly argued that the plant being supported is legally used and useful in providing service to the customers being forced to pay the rate subsidies. On this basis, as well, the uniform statewide rates are unlawful and must be eliminated.

(d) The PSC, through its order, attempts to refute the charge that the compelled rate subsidies resulting from uniform statewide rates are an illegal tax, which the PSC has no jurisdiction to levy. Irrespective of whether the compelled rate subsidies are taxes or not, they are illegal, by any name, and cannot be sustained. Even if the PSC's reasons for adopting

uniform statewide rates (preventing rate shock, less erratic rate changes, uniformity for the sake of uniformity, easily implemented, etc.) were logical and compelling arguments (which they are not) for implementing uniform rates, these factors are no where to be found in the Florida Statutes, where, as a creature of statute, the PSC must explicitly find its authority to act. If the reasons for adopting uniform statewide rates for utilities, such as Southern States Utilities, are so compelling as to require certain customers to begin subsidizing the utility rates of customers of far-flung systems around the State, it is an argument that must appear compelling to a majority of the 160 members of the Florida Legislature and the Governor and not merely two members of a five-member, appointed state commission. Even if approved by the Legislature and the Governor, the concept of uniform statewide rates must be fairly and adequately noticed before it can be considered at hearing and imposed by the PSC. Even then, a decision to implement uniform statewide rates must be based upon competent substantial evidence in the record.

WHEREFORE, Citrus County requests that the commission reconsider Order No. 93-0423-FOF-WS, issued March 22, 1993, eliminate the imposition of uniform statewide rates, and, instead, authorize the collection of stand-alone rates on a

system-by-system basis consistent with the evidence of record in the case and the requirements of the Florida Statutes.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and accurate copy of the foregoing has been furnished by U.S. Mail this 6th day of April, 1993 to the following persons:

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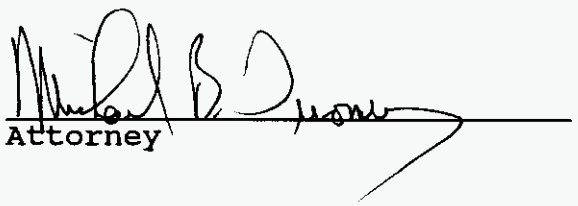

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