BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Investigation into Florida Public Service Commission jurisdiction over SOUTHERN STATES UTILITIES, INC. in Florida.	)	DOCKET NO. 930945-WS ORDER NO. PSC-95-0894-FOF-WS ISSUED: July 21, 1995

The following Commissioners participated in the disposition of this matter:

SUSAN F. CLARK, Chairman
J. TERRY DEASON
JOE GARCIA
JULIA L. JOHNSON
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APPEARANCES:

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FINAL ORDER DETERMINING JURISDICTION OVER EXISTING FACILITIES AND LAND OF SOUTHERN STATES UTILITIES, INC. PURSUANT TO SECTION 367.171(7), FLORIDA STATUTES

BY THE COMMISSION:

BACKGROUND

On September 23, 1993, Southern States Utilities, Inc. (SSU) filed a petition for a declaratory statement regarding this Commission's jurisdiction over SSU in Polk and Hillsborough Counties pursuant to Section 367.171(7), Florida Statutes. By Order No. PSC-94-0686-DS-WS, issued June 6, 1994, we denied SSU's petition; however, we initiated an investigation to consider this Commission's jurisdiction over SSU throughout the state.

On August 26, 1994, Sarasota County petitioned to intervene in this proceeding. Its petition was granted by Order No. PSC-94-1095-PCO-WS, issued September 6, 1994. On September 2, 1994, Hillsborough County petitioned to intervene in this case. Its petition was granted by Order No. PSC-94-1133-PCO-WS, issued September 15, 1994. On September 8, 1994, Polk County petitioned to intervene. Its petition was granted by Order No. PSC-94-1190-PCO-WS, issued September 29, 1994. By Order No. PSC-94-1363-PCO-WS, issued November 9, 1994, as amended by Order No. PSC-94-1363A-PCO-WS, issued November 21, 1994, party status was conferred upon Hernando County. Collier County and the Spring Hill Civic Association (SHCA) filed petitions for intervention prior to the hearing, which were granted at the hearing.

This Commission conducted a hearing on this matter, in Tallahassee, Florida, from January 23 through 26, 1995. On February 21, 1995, the parties submitted their post-hearing filings. In addition, Sarasota, Hillsborough, and Hernando Counties filed requests for oral argument. SSU filed a response in opposition to that request. The Counties' motion was granted, and on April 7, 1995, the Commission heard oral argument in this matter.

FINDINGS OF FACT, LAW, AND POLICY

After considering the evidence presented at the hearing in this proceeding, the briefs and other post-hearing filings of the parties, the parties' positions at oral argument, and the recommendations of the Staff of this Commission, the following represents our findings of fact, law, and policy.

SSU'S Present Facilities and Land Constitute a System

Under Section 367.021(11), Florida Statutes, "'[s]ystem' means facilities and land used and useful in providing service and, upon a finding by the commission, may include a combination of functionally related facilities and land." However, Section 367.021(11), Florida Statutes, does not define "functionally related" or specify the extent to which facilities and land must be functionally related in order to comprise a system. Since the statute is silent, these matters are within the discretion of the Commission.

SSU argued that its facilities and land throughout the state are functionally related and comprise a single system. The remainder of the parties argued that SSU's facilities and land are not functionally related. SSU and Sarasota County were the only parties which presented evidence on this issue.

Statutory Standard

Sarasota County argued that, in order to support a finding of functional relatedness by the Commission, SSU must demonstrate an administrative and operational interdependence between its separate facilities and land. However, since the standard urged by Sarasota County is stricter than required by Section 367.021(11), Florida Statutes, we expressly reject it.

Collier County argued that we must make an independent finding as to each and every plant in each and every county to determine if it is "multi-county jurisdictional." However, its argument is not

supported by the statutory language and Collier County did not cite any other authority for it. We, therefore, reject its argument.

Polk County argued that, under In re: Southern States Utilities, Inc.'s Petition for a Declaratory Statement Regarding Commission Jurisdiction Over Its Water Facilities In St. Johns County (In re: SSU), we must consider the administrative and operational interrelationship of SSU's facilities and land. According to Polk County, "[a]side from the administrative relationship that the Commission has already declined as a basis for exclusive jurisdiction, SSU has failed to establish the substantial administrative and operational interrelationship necessary to constitute a functionally related system of facilities and land."

Although demonstrating a functional relationship might require a lesser standard of proof than demonstrating an administrative and operational interrelationship, we do not need to address that issue at this time. Based upon the evidence presented in this proceeding, SSU's facilities and land are administratively and operationally interrelated. They are, therefore, functionally related.

Administrative Interrelationship

SSU analogized its administrative operations to a wagonwheel, with its Apopka office the hub through which each of its individual plants is related. According to SSU, without such services as purchasing, planning, engineering, environmental compliance, permitting, human resources, accounting, budgeting, legal, employee relations, customer relations, billing, information services, financing, tax administration, and all of the other administrative and customer service functions provided out of Apopka, SSU could not operate any of the individual plants.

SSU presented evidence that, with rare exception, it finances its operations on a company-wide basis. SSU also demonstrated that it purchases insurance and materials, supplies, and services on a centralized basis, provides statewide telephone service through a single carrier, maintains a centralized computer center for its plants in the state, and provides transportation services through company-wide purchases of vehicles, corporate transportation policies, and a nationwide refueling program.

Hillsborough County argued that Section 367.021(11), Florida Statutes, does not state or imply that the determination of whether facilities and land constitute a system hinges upon administrative activities of a central office. Hernando County argued that SSU's

corporate structure, alone, does not make its facilities and land functionally related. It argued that, although corporate structure may result in similarities in the way facilities are run, it does not make them functionally related. According to Hernando County, this is highlighted by the distinction between "system," which is defined in Section 367.021(11), Florida Statutes, and "utility," which is defined in Section 367.021(12), Florida Statutes. Sarasota County also argued that the Apopka office does not make SSU functionally related.

Although SSU's corporate and/or organizational structure may not, in and of themselves, make SSU's facilities and land throughout the state functionally related, they certainly go further toward establishing a functional relationship than not. We, therefore, do not find the Counties' arguments persuasive.

Sarasota County also argued that, in this case, all administrative functions are performed either at the individual plant or the Apopka office and that "[n]one of the administrative activities for one system is performed by personnel located at another system in a contiguous county." However, the evidence demonstrates that administrative activities are performed not only at Apopka, but at the regional and area levels as well. Sarasota County's argument is, therefore, not supported by the record.

Sarasota County further argued that according to Order No. PSC-93-1162-FOF-WU (93 FPSC 8:181, 183-184) issued in In re: SSU, company-wide relationships between facilities in noncontiguous counties are not factors to be considered in determining whether facilities and land are functionally related. However, we did not state that company-wide relationships are not factors. We stated that "company-wide relationships between facilities in noncontiguous counties are not necessary . . . to establish Commission jurisdiction." Id., at 183-184. Sarasota County's argument is, therefore, not compelling.

Based upon the evidence discussed above, we find that SSU's existing facilities and land are administratively interrelated.

Operational Interrelationship

The evidence demonstrates that SSU's operations labor force consists of management personnel and field personnel. Management personnel include SSU's president, four regional managers, thirteen area supervisors and an operations service manager. Regional managers provide administrative and operational support for all facilities in the region and report to Apopka. Area supervisors are responsible for daily operations and supervising the field

personnel. Field personnel include chief operators and operations and maintenance personnel.

SSU claimed that its facilities are operationally interrelated as demonstrated by field activities which cross county boundaries. It presented evidence that one out of every eight hours worked by field personnel involves work across county boundaries. SSU also showed that, in some counties where it has facilities, there are no offices for field personnel; tasks are performed by personnel based in other counties.

SSU presented evidence of two emergency situations, involving its Lehigh facility, in which support was provided from two other SSU plants. It also cited a situation in which a welder, based in Hernando County, was dispatched to perform repairs in Lee County, as well as other examples of cross county labor and the frequencies of cross county field support.

In addition, SSU proved that employees and equipment are shared on a daily basis without regard to county boundaries or jurisdiction. For instance, employees and equipment from Spring Hill are sent to Polk and Hillsborough Counties on an as-needed basis. The equipment includes tanker trucks, pumper trucks and other vehicles, tools, welding equipment, testing equipment, composite samplers, backhoes and other construction equipment, pumps, meters, air compressors, generators, and mowing equipment. It also showed that, during emergencies, major pieces of treatment plant, such as ammoniation equipment, are shared.

The record also demonstrates that SSU purchases materials and supplies, such as chemicals, meters, and parts, which are delivered to, stored at, and distributed from designated locations. For example, chemicals for SSU's Hillsborough and Polk County plants are distributed from the Seaboard facility located in Hillsborough County. Similarly, the facilities at Lake Gibson Estates, located in Polk County, serve as the storage facility for equipment, supplies, and forms for the Zephyr Shores (Pasco County) facility.

SSU further presented evidence that employees from the operations services department, environmental compliance and permitting department, and senior operations personnel based in Apopka, provide technical training to field employees. Such training includes training in plant operations, Department of Environmental Protection and water management district permitting, proper equipment use and maintenance techniques, proper testing procedures, safety, including the proper use, handling and storage of hazardous chemicals, confined space entry, proper cross connection/backflow prevention and other operations procedures.

Training is provided predominately in Apopka, but also on site at individual plants or in central locations within each region. The location where the training is provided depends upon the content of the training. SSU conducted approximately 175 training sessions in 1993 and 1994, which were attended by 1,316 employees statewide.

SSU also demonstrated that it was establishing a central laboratory in Volusia County (North Region) to perform tests on certain types of samples taken from all SSU service areas in every region, which is yet another example of SSU's services crossing county boundaries. Approximately ninety percent of the lab analyses would be performed at this lab. SSU expects that the lab will be operational within the next few months.

Finally, SSU showed that meter readings are keyed into a batch file from the meter read sheets or downloaded into its computer system directly from the electronic devices. Meter readings which are not downloaded directly into the computer are sent to Apopka. All customer bills are mailed to customers from the Apopka office.

Sarasota County argued that any activities which flow across county boundaries are either de minimis, or irrelevant because the counties involved are not contiguous. The evidence, however, demonstrates that substantial activities cross county boundaries. Accordingly, we reject Sarasota County's argument regarding the so-called de minimis nature of the activities.

As for the argument regarding contiguity, Sarasota and the other Counties rely on Board v. Beard for the proposition that, unless all of the counties involved are contiguous, we cannot find a functional relationship. We do not agree.

Although the Board v. Beard Court discussed contiguity, in terms of a hypothetical utility, it did not impose any "contiguity" requirement. In addition, its discussion specifically addressed whether service transversed county boundaries, not whether the facilities and land constitute a system pursuant to Section 367.021(11), Florida Statutes. Therefore, we reject the argument that SSU must meet a "contiguity" requirement in order for us to find that its facilities and land constitute a system.

Moreover, the Court was not clear in Board v. Beard whether the hypothetical utility consisted of isolated facilities separated by hundreds of miles or multiple facilities which span hundreds of miles. In this case, twenty-three of the twenty-six counties are contiguous in one continuous span. Washington, Martin, and St. Lucie County are not part of this span; however, St. Lucie and Martin County are contiguous to each other.

Although the Washington County facilities are geographically isolated from SSU's other facilities, SSU believes that they are also operationally interrelated. Although there is little direct sharing of equipment or personnel with those facilities, they do share in the services provided by the Apopka office. There is evidence that operations are handled the same throughout the west region, in which Washington County is located, and that personnel from other parts of the west region could operate the Washington County facilities if necessary. In addition, all customers, including those in Washington County, may contact the "1-800" number for customer service.

The record also shows that each facility, including the Washington County facility, is connected by several computer links to Apopka. These computer links strengthen the functional relationship between all of SSU's facilities. They allow SSU to track environmental compliance and file reports with regulators. They also permit a centralized analysis of monthly operating report data by Apopka personnel to facilitate prompt identification and analysis of abnormalities in water or wastewater quality and expedite remedial measures.

The computer links also allow SSU to expedite services that are provided to the customers, including turning their water on or off, other service calls, responses to emergencies, customer complaints, and requests for information. In fact, any customer can go to any office in any county, whether contiguous or not, to pay a bill or to have service turned on or off.

Based upon the evidence discussed above, we find that SSU's existing facilities and land are operationally interrelated.

Comparison to Previous Cases

Hillsborough County argued that the facts in this case differ from the facts in In re: Petition for Declaratory Statement Relating to Jurisdiction of the Florida Public Service Commission over Jacksonville Suburban Utilities Corporation in Duval, Nassau and St. Johns Counties (In re: JSUC). Hillsborough County noted that JSUC's office was centrally located and that the driving time to the remote areas in each of the counties was approximately the same, but that driving times from SSU's Apopka office to the individual sites vary considerably. It also noted that the same manager and maintenance personnel are not responsible for all of SSU's operations, as was the case with JSUC. Although there are differences between SSU's and JSUC's operations, we do not believe that any particular distinguishing characteristic is dispositive.

Hernando County argued that SSU's operations differ in important respects from those of JSUC. For instance, JSUC was managed by one manager, used the same employees in each of the three counties, and was generally run as one operation throughout the three counties. Hernando County argued that, even based solely upon geographical considerations, SSU's operations do not, indeed cannot, share the same degree of operational and administrative integration. Again, however, we do not believe that any of these differences are necessarily dispositive.

Hernando County also argued that this case is dissimilar from In re: JSUC because SSU has extra levels of management that JSUC did not have. Hernando County acknowledges, however, that this is merely a function of its size. We agree. Moreover, we do not find these extra levels of management to be germane to our determination whether SSU's facilities and land constitute a system.

Sarasota County argued that SSU has not demonstrated the administrative and operational interdependence demonstrated in In re: SSU and In re: JSUC. Sarasota County argued that SSU's and JSUC's facilities in St. Johns County were operationally and administratively dependent upon facilities and personnel outside of St. Johns County. However, since we have not accepted Sarasota County's suggested standard of administrative and operational interdependence, its distinction here is not persuasive.

Miscellaneous Arguments

Hillsborough County also argued that we cannot find that SSU's facilities and land, wherever located, constitute a single system because, "where the legislature includes language ['wherever located'] in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposefully in the disparate inclusion and exclusion." The problem with this argument is that "wherever located" does not appear in Chapter 367, Florida Statutes. The language was included in the phrasing of an issue to make it clear that we were considering all of SSU's present operations in the State of Florida.

Hernando County argued that, since Section 367.021(11), Florida Statutes, does not define "functionally related," we must apply the plain meaning. According to Hernando County, although not required under Board v. Beard, "the most obvious example of such a relationship would be the physical connection of facilities through pipes or lines."

We agree that we should use the plain meaning of the words at issue. As used in Section 367.021(11), Florida Statutes, "functionally" modifies "related" which, in turn, modifies "facilities and land." Thus, by the statute's plain meaning, the facilities and land must be related by or through the functions they perform. The statute does not set forth any further restrictions. We also agree with Hernando County that it is clear from Board v. Beard that a physical connection is not required.

Conclusion

Upon consideration of the evidence and the arguments advanced by the parties, we find that SSU's facilities and land are administratively and operationally interrelated. We also find that SSU's present facilities and land are functionally related and, as such, constitute a single system pursuant to Section 367.021(11), Florida Statutes.

The Meaning of "Service"

Section 367.171(7), Florida Statutes, provides that "[n]otwithstanding 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 . . . ." Chapter 367, Florida Statutes, does not define "service." Hence, the meaning of "service" is crucial to our jurisdictional determination.

Prior to this proceeding, we have only considered the issue of our jurisdiction under Section 367.171(7), Florida Statutes, on three occasions. The first was In re: Petition of General Development Utilities, Inc. for Declaratory Statement Concerning Regulatory Jurisdiction Over its Water and Sewer System in DeSoto, Charlotte, and Sarasota Counties (In re: GDU). By Order No. 22459 (90 FPSC 1:396), we granted GDU's petition for declaratory statement and asserted jurisdiction over GDU's operations in DeSoto, Charlotte, and Sarasota Counties.

On reconsideration, the City of North Port and Charlotte County raised, for the first time, the issue that GDU's wastewater lines did not physically cross county boundaries. By Order No. 22787, (90 FPSC 4:125), we stated that "we specifically find, as a matter of law, that GDU's service can transverse county boundaries, even if its lines do not physically cross the same boundaries." However, we did not directly address the definition of "service."

In In re: JSUC, by Order No. 24335 (91 FPSC 4:103), we determined that JSUC's facilities in St. Johns and Nassau County were subject to our jurisdiction under Section 367.171(7), Florida Statutes, even though there were no physical connections across county boundaries. In so doing, we accepted JSUC's uncontroverted assertions regarding the administrative and operational interrelationships between its Duval, Nassau, and St. Johns County operations. We did not, however, define "service."

On appeal of Order No. 24335 by St. Johns County, the Court held, in Board v. Beard, supra at 593, that:

> To determine whether JSUC was a system whose service transversed county boundaries within the meaning of the subsection, the PSC properly focussed upon the statutory definition of 'system' set out in subsection 367.021(11):
>
> > 'System' means 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.
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> We reject the county's assertion that the functional relationship referred to requires an actual physical connection between JSUC's facilities. If physical connection was required there would be little need for a 'finding by the commission' that the facilities were functionally related. We note that the County does not dispute JSUC's factual account of the functional interrelatedness of its Duval and St. Johns facilities, and the undisputed evidence establishes that these facilities are interrelated administratively and operationally. Thus, the evidence supports the PSC's finding that JSUC's facilities constitute 'a combination of functionally related facilities and land'; in a word, a 'system.' Because the service provided by this system crosses county boundaries, it is clear that the PSC has exclusive jurisdiction over JSUC pursuant to subsection 367.171(7).

In In re: SSU, by Order No. PSC-93-1162-FOF-WU (93 FPSC 8:181), we exercised jurisdiction over SSU's operations in St. Johns County pursuant to Section 367.171(7), Florida Statutes. In largely adopting SSU's uncontroverted assertions, we stated that:

> [T]he 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'. [sic] Because the service provided by the system transverses county boundaries, we declare that the Commission has exclusive jurisdiction over Southern States Utilities, Inc.'s water facilities in St. Johns County pursuant to Section 367.171(7), Florida Statutes.

We also acknowledged SSU's assertions of a wide range of administrative services which it provided to the St. Johns County facilities from its corporate headquarters in Orange County. We concluded, however, that "[t]hese company-wide relationships between facilities in noncontiguous counties are not necessary, however, to establish the Commission's jurisdiction." Again, however, we did not define what is meant by "service."

SSU relies upon our decisions in the above three cases, as well as the holding in Board v. Beard, to argue that "service," as used in Section 367.171(7), Florida Statutes, includes everything that is necessary to provide water and wastewater collection and treatment to SSU's customers. SSU argued that "service" cannot be segregated from the "system," which provides the service. According to SSU, if its system transverses county boundaries, its service necessarily transverses county boundaries.

The Counties contended that "service," as used in Section 367.171(7), Florida Statutes, can only mean the physical delivery of water and the collection and treatment of wastewater. They argued that their position is consistent with the word's usage throughout Chapter 367, Florida Statutes, and Chapter 25-30, Florida Administrative Code, as well as with the rules of statutory construction. Sarasota County also argued that, since none of SSU's facilities located in any nonjurisdictional county provides water or wastewater to contiguous counties, Section 367.171(7), Florida Statutes, is not applicable to SSU on a statewide basis.

The Counties' argument that service only means the physical delivery of water and the collection and treatment of wastewater leads, inevitably, to the conclusion that there must be a physical connection across county borders. That position has already been explicitly rejected by the Court in Board v. Beard. As for Sarasota County's argument regarding contiguity, as noted above, contiguity is dictated by neither the statutory language nor the holding in Board v. Beard.

Sarasota County urges that the narrow meaning of "service" is consistent with its usage in the Venice Gardens franchise agreement, Sarasota County Ordinance No. 83-48, as amended, and the Sarasota County Water and Sewer Franchise Utility Rules and Regulations. We do not administer these franchises or ordinances. This argument is, therefore, not persuasive.

In addition, it argued that Section 367.081(2)(a), Florida Statutes, distinguishes between "service" and "cost of service." Accordingly, Sarasota County maintained that SSU's centralized activities are elements of the cost of service, but not of "service" itself. However, this distinction can easily be turned around to support SSU's argument: since the "cost" of "service" includes everything necessary to deliver water to and collect and treat wastewater from SSU's customers, "service," as used in Section 367.081(2)(a), Florida Statutes, includes SSU's centralized administrative support functions.

The word "service" or "services" is used in forty-four sections and subsections in Chapter 367, Florida Statutes, in the context of water and wastewater. However, that usage is not exclusive; service is also used, with different meanings each time, in three other sections of Chapter 367, Florida Statutes. The Counties' definition of the word "service" is narrow, inconsistent with well-established Commission practice, and not compelled by statutory construction principles. We, therefore, reject it.

The delivery of water and the collection and treatment of wastewater represent merely a utility's output or production, not the provision of service. Water cannot be provided, nor can wastewater be collected and treated, without a myriad of administrative and operational support functions. SSU carries out these functions primarily from centralized locations.

Polk County contended that, although the administrative and operational support functions may be necessary, it is not necessary that they emanate from a centralized location. It argued that this support could be provided from each county. However, it would be economically illogical and, most likely, imprudent for SSU to operate in the manner suggested by Polk County. It also does not matter that these services could be provided from each county. SSU operates as it does and that is the factual situation before us.

In response to a query, at oral argument, whether service could be delivered across county boundaries without a physical connection, Hernando County replied that the Board v. Beard Court did not address the meaning of "service." Hernando County contended that, after finding that JSUC's facilities constituted a

system, the Court made a "leap" in declaring that the service provided by that system transversed county boundaries. We do not agree. Although the Court did not specifically address the definition of "service," it held, id. at 592-593, that:

> To determine whether JSUC was a system whose service transversed county boundaries within the meaning of the subsection, the PSC properly focussed upon the statutory definition of 'system' set out in subsection 367.021(11):
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> * * *
>
> We reject the county's assertion that the functional relationship referred to requires an actual physical connection between JSUC's facilities.
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> * * *
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> Because the service provided by this system crosses county boundaries, it is clear that the PSC has exclusive jurisdiction over JSUC pursuant to subsection 367.171(7).

SSU provided abundant evidence and compelling argument that "service" includes everything necessary to provide water to and collect and treat wastewater from its customers, including the administrative and operational support originating out of Apopka. It should be noted that one of Hernando County's proposed findings of fact (which we rejected on other grounds) indicates that fully fifty-five percent of SSU's total costs for 1993 and 1994 were incurred at the statewide level. We agree that the physical delivery of water and collection and treatment of wastewater cannot be logically divorced from all the components that go into providing the end product. We, therefore, find that "service" includes everything necessary to provide water to and collect and treat wastewater from SSU's customers, including the administrative and operational support functions originating out of Apopka.

Impact on Customers

SSU and the Counties provided extensive testimony and argument regarding the potential impact of a determination that this Commission has jurisdiction over SSU's operations in non-jurisdictional counties pursuant to Section 367.171(7), Florida Statutes, upon SSU's customers and upon the Counties' ability to address "local concerns." However, these potential impacts are not elements to be considered in making a jurisdictional determination under Section 367.171(7), Florida Statutes. Accordingly, although

we acknowledge their testimony and arguments, we make no findings and reach no conclusions on this matter.

Conflict With Constitutional or Statutory Provisions

Sarasota County contended that Section 367.171(7), Florida Statutes, conflicts with the county option provisions of Sections 367.171(1) and (3), Florida Statutes. Sarasota County argued that, in order to read these three sections in harmony, "application of the former must be restricted to those circumstances where a utility system is providing water and wastewater service to contiguous counties." We do not agree. Section 367.171(7), Florida Statutes, states, in pertinent part, that "[n]otwithstanding 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. . . ." (Emphasis added.) That statement makes it clear that Section 367.171(7), Florida Statutes, preempts the other subsections.

The Counties and SSU also provided extensive argument on whether a determination that we have jurisdiction would conflict with any other statutory provisions, or any constitutionally granted charter or home rule powers. Although it does not appear that any conflict would result, we again do not make any specific findings because we do not have any discretion under the statute to consider such matters.

Regulatory Inefficiencies

SSU also presented evidence and argument that regulatory inefficiencies arise out of county-option regulation. The Counties presented their own evidence and argument that such inefficiencies do not exist or will not result if jurisdiction over SSU's operations remains with nonjurisdictional counties. Although we acknowledge their arguments, we do not make any specific findings on these arguments because they are also not an element of our analysis under Section 367.171(7), Florida Statutes.

Impairment of Growth Management

Finally, the parties presented abundant evidence and argument regarding whether a determination that this Commission has jurisdiction, pursuant to Section 367.171(7), Florida Statutes, would impair the Counties' ability to implement growth management policies. Again, although we acknowledge the parties' arguments, we make no finding in this regard because it is not an element of our analysis under the statute.

SSU Provides Service Which Transverses County Boundaries

We have already determined that SSU's facilities and land constitute a system as defined by Section 367.021(11), Florida Statutes. We have also found that "service," as used in Section 367.171(7), Florida Statutes, includes everything necessary to provide water to and collect and treat wastewater collection from SSU's customers, including administrative and operational support services. The final element of our analysis is whether SSU provides service which transverses county boundaries, pursuant to Section 367.171(7), Florida Statutes.

In its brief, Polk County stated that Board v. Beard left the hypothetical question of whether facilities located in noncontiguous counties could still come under the PSC's jurisdiction unanswered. Polk County noted that the decisions in Board v. Beard and In re: SSU dealt with a relatively small number of facilities located in contiguous counties, and that this docket addresses a considerably larger number in noncontiguous counties.

Hillsborough County argued that service cannot be said to transverse county boundaries because SSU does not satisfy the "contiguity requirement." In support of its argument, Hillsborough County cited Board v. Beard. Hernando and Sarasota County agreed. Hernando County argued that service does not transverse county boundaries because Hernando County is not contiguous to Orange County, in which SSU's corporate headquarters are located. Sarasota County argued that, even if service includes support services from SSU's corporate headquarters in Orange County, the service can only transverse the contiguous county boundaries of Lake, Osceola, Seminole, and Brevard.

SSU argued that Section 367.171(7), Florida Statutes, does not require contiguity. SSU contended that if the Legislature intended for a utility with functionally related facilities to be classified as a jurisdictional system, there is no logical reason to distinguish between contiguous and noncontiguous counties.

We agree with the position advanced by SSU. As noted above, the Board v. Beard Court did not hold that counties must be contiguous in order for this Commission to find that it has jurisdiction under Section 367.171(7), Florida Statutes.

Hernando County also contended that, although the statute does not explicitly state it, the service that transverses county boundaries must be substantial. We have already found that SSU is administratively and operationally interrelated. Approximately

fifty-five percent of SSU's total costs for 1993 and 1994, are provided out of its corporate headquarters. Although it should not be assumed that any level of service, no matter how minimal, triggers jurisdiction, the record for this case demonstrates that substantial service transverses county boundaries.

Finally, Hillsborough County argued that a determination that we have jurisdiction would be an improper expansion of our jurisdiction. The cases cited by Hillsborough County, Fraternal Order of Police v. City of Miami, 492 So. 2d 1122 (Fla. 3d DCA 1986), and Florida Bridge Co. v. Bevis, 363 So. 2d 799 (Fla. 1978), discuss the principle that an agency may not expand or act outside of its statutorily authorized jurisdiction. As noted in Bevis, any doubt as to a particular power should be resolved against the exercise of that power. However, Section 367.171(7), Florida Statutes, states that this Commission shall have jurisdiction over utility systems whose service transverses county boundaries. Our determination of jurisdiction, authorized pursuant to Section 367.171(7), Florida Statutes, is not equivalent to an expansion of jurisdiction outside of legislatively-conferred powers. Therefore, we conclude that a determination of SSU's jurisdictional status is specifically within our statutorily authorized powers.

Based upon the evidence and argument, we find that SSU is a single system whose service transverses county boundaries. As such, this Commission has exclusive jurisdiction over SSU's existing facilities and land in the State of Florida pursuant to Section 367.171(7), Florida Statutes.

Jurisdictional Status of
Future-Acquired SSU Facilities

Since we have determined that this Commission has exclusive jurisdiction over all existing SSU facilities in the state, we must also address whether our exclusive jurisdiction will apply to any future-acquired SSU facility.

SSU stated in its post-hearing brief that the Commission would have jurisdiction over all SSU facilities acquired in the future.

Polk County stated in its brief that if we find that this Commission has exclusive jurisdiction and that finding is affirmed, facilities acquired in the future would also be jurisdictional. The County stated that this highlights the problem that a utility may circumvent county regulation by creating an administrative structure that provides administrative support which transverses county boundaries.

Sarasota County contended that because SSU-owned facilities throughout the state are not functionally related and do not comprise a single system, newly acquired facilities will be regulated by the regulator designated by the Board of County Commissioners pursuant to Sections 367.171(1) & (3), Florida Statutes.

Hernando County and Hillsborough County argued that the Commission must make an individual factual determination as to whether the new facility meets the statutory requirements for each new facility acquired in the future.

Our determination that SSU's existing facilities constitute a single system whose service transverses county boundaries is based upon a detailed analysis of the evidence presented in this proceeding and our interpretation of the applicable statutory provisions. It would be impossible to make a prospective determination as to any facilities which SSU may acquire in the future. Such a determination would require the assumption that the facilities are in fact functionally related. There is no evidence in this record as to any future facilities which SSU may acquire. We, therefore, agree with Hernando and Hillsborough County that a separate determination will be required for each future-acquired facility. Accordingly, each time SSU acquires a new facility, it should petition this Commission to determine whether that facility becomes part of the system recognized in this proceeding, as well as any jurisdictional ramifications thereof, along with its application for transfer or amendment.

Rulings on Proposed Findings of Fact

The only parties that filed proposed findings of fact and conclusions of law were Collier, Hernando, and Sarasota Counties. Under Section 120.59(2), Florida Statutes, we are required to consider and rule upon each proposed finding of fact. However, we are not required to rule upon proposed conclusions of law, and we expressly decline to do so here. Accordingly, the parties' proposed findings of fact are accepted and rejected as follows:

The following proposed findings of fact are accepted:

Sarasota County: 2, 3, 4, 7, 9, 11, 13, 17, 20, 23, 26, 27, 29, 31, 32, 33, 46, 47, 48, 53.

Hernando: 1, 6, 11, 13, 26, 30

Collier: 1, 2, 3, 4, 5, 6, 9, 10, 11, 12, 13, 14, 17, 20, 21, 24, 26, 27, 28, 29, 32, 34, 46, 50, 51, 52, 53, 54, 55, 57, 58, 59

The following proposed findings of fact are rejected as not supported by the record:

Sarasota County: 1, 6, 8, 10, 12, 19, 21, 22, 24, 25, 28, 30, 34, 35, 36, 40, 41, 42, 43, 44, 45, 49, 50, 52.

Hernando: 7, 12, 15, 21, 27, 28, 29

Collier: 7, 8, 22, 23, 25, 30, 31, 33, 36, 38, 39, 40, 41, 43, 44, 45, 47, 48, 56

The following proposed findings of fact are rejected as cumulative:

Sarasota County: 37, 38, 39

The following proposed findings of fact are rejected as argumentative and/or conclusory:

Sarasota County: 5, 14, 15, 16, 22, 30, 40, 43, 51

Hernando: 17, 31, 33

The following proposed findings of fact are rejected as not constituting findings of fact:

Sarasota County: 18

Collier: 49

The following proposed findings of fact are rejected as not complying with the requirements of Rule 25-22.056(2)(b), Florida Administrative Code:

Hernando: 2, 3, 4, 5, 8, 9, 10, 14, 16, 18, 19, 20, 22, 23, 24, 25, 32

Collier: 15, 16, 18, 19, 35, 37, 42, 60, 61.

CONCLUSIONS OF LAW

1. This Commission has the jurisdiction to consider and determine the jurisdictional matter at issue in this

proceeding pursuant to Sections 367.011 and 367.171(7), Florida Statutes.

2. SSU's existing facilities and land are functionally related, and thus comprise a system as defined in Section 367.021(11), Florida Statutes.

3. Service, as used in Section 367.171(7), Florida Statutes, consists of the physical delivery of water and the collection and treatment of wastewater, and all of the administrative and operational activities necessary to deliver water and collect and treat wastewater.

4. SSU is a single system whose service transverses county boundaries.

5. This Commission has exclusive jurisdiction over SSU's existing facilities and land in the State of Florida.

It is, therefore,

ORDERED by the Florida Public Service Commission that, pursuant to Section 367.171(7), Florida Statutes, this Commission has exclusive jurisdiction over all existing facilities and land owned by Southern States Utilities, Inc. throughout the State of Florida. It is further

ORDERED that each of the findings made in the body of this Order is hereby approved in every respect.

By ORDER of the Florida Public Service Commission, this 21st day of July, 1995.

BLANCA S. BAYÓ, Director
Division of Records and Reporting

by: Kay Flynn
Chief, Bureau of Records

(S E A L)

RJP

CONCURRENCE/DISSENTS

Commissioner Garcia concurs with the Commission decision, and dissents in part, as follows:

My concern is for the inevitable precedential effect of our decision in this docket on future cases, stemming from the perception that the standard implied in this order may serve to create a situation in which we as a Commission could never reasonably decline to extend jurisdiction over parts of a system which are located in "non-jurisdictional" counties once the petitioner utility makes a showing of the functional relation of its land and facilities, wherever located. This Commission has taken great pains to ensure that this decision is the result of the merits of this case only, indeed that even future acquisitions of facilities by SSU will be subject to the same factual determination. In reality, the end result is a diminished level of the discretion which this Commission enjoys and is such an integral part of the discharge of our duties.

Many issues were considered as prelude to our decision today, and certain of these were found irrelevant to our determination. The issue of constitutional conflict with the home rule authority of the counties stands out among these. While I agree with the Commission's assessment that it has the statutory mandate to supersede these counties' home rule powers, it is in the spirit of deference to the wishes of the public as expressed through their duly elected representatives that I couch my concerns. Perhaps the question more properly lies within the purported legislative intent of Section 367.171(7), Florida Statutes, which does not seem to offer this Commission the level of discretion necessary to address these concerns, but it is this decision which gives that intent a tangible character. It seems questionable that the same legislature which charges this Commission with the duty to determine the public interest would limit, in an appreciable way, the discretion necessary for this Commission to make that very determination.

By its decision today the Commission is foreclosed from concluding as to the possibility that, even despite a utility's showing of a functionally related system, oversight and regulation by a local authority is in the best interests of those affected. We are forced to ignore the possibility that, despite the obvious overall benefits of statewide regulation, ratepayers in a given community may have actually bargained for a level of regulatory inefficiency in exchange for a more responsive and locally sensitive regulatory environment. These are possibilities which should have a place in our deliberations, and there is a question

whether these possibilities are properly safeguarded by this decision.

At a time when the frequently incoherent monster that is water policy development and enforcement at the state level is under attack for its own inefficiencies, we should be cautious to quash any effort at consolidation and efficiency, even if it is not our own.

Commissioner J. Terry Deason dissents from the Commission's decision, as follows:

I dissent from the Commission's decision to the extent that we find that "service", as the term is used in Section 367.171(7), Florida Statutes, means anything other than the delivery of water and/or wastewater. Our decision that this term should be expansively defined to mean practically any act that is undertaken by the utility in the process of delivering water and/or wastewater is, in my view, an improper substitution of our judgement for that of the legislature. I am particularly concerned that the direct consequence of our actions has created a serious encroachment on the authority of counties. This is a serious step and one that should not be taken lightly. At a minimum, the asserted ambiguity in the statute should not have been resolved in an expansive way that has resulted in divesting county government of fundamental home rule powers.

In explaining my position, I feel that it is necessary to review our prior decisions (and resulting court decisions) and to discuss the two most relevant statutes. In my opinion, the prior decisions should serve as no basis for our decision. They are either inapplicable or are based on a faulty procedure that deprives them of any value as a precedent. Furthermore, I believe the purposes of the two statutes have been misunderstood by the Commission and parties in the past and perhaps by the majority here. I believe that there are at least two very separate and distinct purposes behind the statutes. One statute (Section 367.021(11), Florida Statutes) operates to limit or define <u>how</u> the Commission can regulate utilities within the jurisdictional counties. The other (Section 367.171(7), Florida Statutes) operates to define <u>where</u> the Commission can regulate utilities over which they otherwise would have jurisdiction.

<u>Prior PSC decisions</u>

At the outset, I think it is important to emphasize that our decision in this case represents the first instance where the provisions of Section 367.171(7), Florida Statutes, have been

directly interpreted. Additionally, this is the first time that we have afforded the requisite due process required by law. There have been 5 previous occasions where this issue has been addressed in some manner by the Commission or a court. In re: Petition of General Development Utilities, Inc. for Declaratory Statement Concerning Regulatory Jurisdiction Over its Water and Sewer System in DeSoto, Charlotte, and Sarasota Counties, 90 FPSC 1:396, reconsideration denied, 90 FPSC 4:125 (In re: GDU); In re: Petition for Declaratory Statement Relating to Jurisdiction of the Florida Public Service Commission Over Jacksonville Suburban Utilities Corporation in Duval, Nassau and St. Johns Counties, 91 FPSC 4:103 (In re: JSUC); In re: Southern States Utilities, Inc.'s Petition for a Declaratory Statement Regarding Commission Jurisdiction Over Its Water Facilities In St. Johns County, 93 FPSC 8:181, 182 (In re: SSU); Board of County Commissioners of St. Johns County v. Beard, 601 So. 2d 590 (Fla. 1st DCA 1992) (Board or Board v. Beard (Appeal of In re: JSUC); and Citrus County, Florida and Cypress and Oaks Villages Association v. Southern States Utilities, Inc. and the Florida Public Service Commission, 20 Fla. Law weekly D838a, rehearing denied, 20 Fla. Law Weekly D1518.

However, in each instance, the focus of the case was not on the pivotal provisions of Section 367.171(7), Florida Statutes. Rather, the first case (In re: GDU) was focused on the validity of the interlocal agreement, while the last two decisions of this Commission (In re: JSUC and In re: SSU) were focused exclusively on factual allegations directed at showing that facilities and land of the utilities were functionally related for the purpose of showing that one system exists under Section 367.021(11), Florida Statutes. Only the first case (In re: GDU) contains any discussion as to the operation of Section 367.171(7), Florida Statutes. As discussed below, that discussion is not helpful in this case. In each of the three prior Commission cases, the purpose of the declaratory statement requests were to extend PSC jurisdiction to facilities located in counties that were not jurisdictional pursuant to Section 367.171(3), Florida Statutes. A close inspection of these cases shows that they do not provide a basis for the Commission's decision here.

It has been suggested in the instant proceeding that In re: GDU represents a PSC precedent bearing upon the meaning of the word "service". I think the facts of that case show otherwise. In the GDU case, which was filed 12 days after the effective date of 367.171(11), Florida Statutes, the physically interconnected water system did actually transverse the boundaries of DeSoto, Sarasota and Charlotte counties. Because of the asserted existence of the physical interconnection, that case did not involve a question of functional relatedness. Instead, the central question was whether

a valid interlocal agreement existed pursuant to Section 367.171(7), Florida Statutes. It was pointed out only on reconsideration (Order No. 22787; 90 FPSC 4:125, 126) that GDU's associated wastewater system did not physically transverse the county lines. In response GDU contended that the water and the wastewater system constituted a single system. In citing the definitional subsections of Section 367.021(10) (defining service area)[1] and (11), Florida Statutes, the Commission appeared to make a definitive ruling on the meaning of the word "service" in stating on reconsideration that:

> [T]hese definitions show that it is not necessary that GDU's lines physically cross a county boundary for GDU's service to transverse the same boundary. Therefore, we specifically find, as a matter of law that GDU's service can transverse county boundaries, even if its lines do not physically cross the same boundaries. (Emphasis in the original.)

90 FPSC 4:125, 127.

In citing the definition of "service area" (which presumes the prior existence of a certificate and, hence, jurisdiction) in conjunction with the definition of system, the PSC was clearly accepting GDU's contention of water and wastewater comprising a single-system and recognizing that it was not necessary for the wastewater lines to physically cross the county boundary when the service area defined by the physically transversing water lines was located in more than one county.[2] Furthermore, the order must be read narrowly as addressing the status of the wastewater system only since that was the issue before the Commission on reconsideration. In other words, the Commission did not recede from the position in the initial order that the physical crossing of the water system operated to satisfy the requirements of Section 367.171(7), Florida Statutes.

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[1]This provision was not at issue in the instant case presumably because it is inapplicable to situations where the PSC does not already have jurisdiction.

[2]There is a logical basis for assuming the physical interconnectedness of both the water and wastewater system in the sense that the wastewater facilities likely rely on the delivery of water from the water facilities which undeniably crossed the county lines.

Thus, the purported conclusion of law in the GDU order is very narrow in its application and does not remotely apply to the case at hand because of the lack here of a physical transversing of service. It is obvious from a close reading of the GDU case that the Commission has never ruled on the meaning of service as it is at issue in this case. Clearly there has been no expression of the Commission's policy on this point.

Likewise, the Commission's two other orders in this general area provide no guidance in our decisionmaking. Neither of these cases address the question of service. In addition, to the extent that they purport to make the required findings of the existence of a functionally related unitary system, the orders are likewise of no authoritative value because there was never a finding by the Commission that a single system existed. The declaratory statement process utilized by the Commission did not allow for factfinding to occur or for any party other than the company to controvert the represented facts.[3] We implicitly recognized this problem in the instant case in deciding to hold an investigative proceeding rather than to continue to make decisions by the declaratory statement vehicle.[4] Because of this procedural defect and the failure to segregate the issue of defining the word service, these cases offer no guidance in deciding this case.

Perhaps more significantly, our decisionmaking process has, I fear, created some confusion at the appellate court level. In Citrus County v. Southern States Utilities, the Court reversed our decision to apply uniform rates to all 127 systems then within the regulatory jurisdiction of the PSC. In so doing, the Court stated:

> Here, we find no competent substantial evidence that the facilities and land comprising the 127 SSU systems are functionally related in a way permitting the PSC to require that the customers of all systems pay identical rates. (Emphasis added.)

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[3]The declaratory statement process utilized by the Commission is not a factfinding process. It is ex parte by nature as evidenced by the exemption from the ex parte prohibitions of Section 350.042(1). Intervention is not normally allowed for the purpose of disputing facts. Rather, intervention has been previously allowed on a limited basis for arguing the applicable law.

[4] Order No. PSC-94-0686-DS-WS; 94 FPSC 6:67.

20 Fla. Law Weekly D838. In referencing the required finding of functional relatedness per subsection 367.021(11), Florida Statutes, the Court further stated that:

> No such finding was made here and could not properly be made given the apparent absence of evidence that the systems were operationally integrated, or functionally related, in any aspect of utility service delivery other than fiscal management.

Id.

Without a doubt the Citrus County Court found that competent substantial evidence must be taken in meeting the "finding" requirement of the statute. That same Court appears to be laboring under the misunderstanding that the commission adhered to that very stringent standard in reaching the decision (In re: JSUC) that the Court upheld. When contrasted to the explicit requirement that "competent substantial evidence" be taken, confusion on the Court's part is apparent in the immediately preceding portion of the Citrus County opinion when, in citing Board v. Beard (addressing In re: JSUC), the Court is apparently under the impression that the PSC's process yielded:

> undisputed evidence . . . that JSUC's facilities were interrelated not only administratively but also operationally, such that the company should be regulated by the PSC.

Id.

In re: JSUC is cited with approval as if it meets the legal requirement that the Commission's finding be supported by competent substantial evidence. It is less than clear that the Court was fully aware of the nature of the proceeding held before the Commission and the fact that the PSC order relied upon in Board v. Beard mistakenly represents that "[t]he facts in the amended petition are not disputed". This language found its way into both Court opinions and was apparently relied upon heavily by the Court in its conclusions that were based on the mistaken belief that factfinding occurred before the Commission.

Regardless, it is certainly the height of irony that this proceeding was initiated by the implicit recognition that an investigation docket affording affected parties the opportunity to participate in a Section 120.57(1), Florida Statutes, evidentiary

hearing was preferable to the non-factfinding process of a declaratory statement proceeding. Order No. PSC-94-0686-DS-WS; 95 FPSC 6:67. Yet in the very decision resulting from this correct factfinding process, the majority relies on orders and subsequent judicial pronouncements that were the product of a patently defective process that was devoid of factfinding or an opportunity to controvert or "dispute" facts that were merely alleged in a pleading. For these reasons, I would conclude that these preceding decisions should have very little weight in guiding our decision here.

Having found no persuasive decisional authority to guide my decision in this case, I have reviewed the two most directly applicable sections of Chapter 367, Florida Statutes, for guidance here. I find the most help in reaching my conclusion in the contrast between the two provisions and the very different purposes they are intended to serve.

Section 367.021(11), Florida Statutes

Much of the focus of the past Commission decisions in this area has been on the provisions of Section 367.021(11), Florida Statutes. This subsection is very significant to the scope of the Commission's authority in that it defines, for some purposes, the limits of the Commission's ability to set rates and otherwise regulate utilities. By way of illustration, one application of this principle is the authority to establish uniform rates among all of the SSU systems subject to Commission jurisdiction. At a minimum, this important definitional section requires the PSC to determine that a unitary "system" exists before the Commission can authorize a uniform rate structure for those segments of the "system" that are within the Commission's jurisdiction. This principle was the central holding in Citrus County. As discussed above, in that case, the Court reversed the PSC's authorization of uniform rates among the 127 geographically dispersed operations because the Commission failed to make an evidentiary finding that the entire system constituted a combination of functionally related facilities and land. Clearly, the Court concluded that the section operates as a limitation on the exercise of the PSC's regulatory functions. In other words the existence of a "system" is a prerequisite to the way the Commission can regulate the utilities that are under it's jurisdiction. In the Court's view the Commission was required to make an evidentiary finding linking all the facilities and land of the 127 utilities before we could treat them as one system for the purposes of applying a uniform tariff.

This view of the operation of Section 367.021(11), Florida Statutes, supports my position that there are fundamentally

different purposes behind the Legislature's enactment of the two laws central to this case. I certainly do not view the Commission's decision in this case to be without merit. I concur in the decision that functional relatedness exists among all the facilities and land of the SSU utility holdings within the state. The factual determination that we have made in this case should satisfy the holding of the Citrus County Court. In my opinion, it also cures the defect in the way we have decided the issue in the past three cases. Based on this evidentiary finding, I believe that there is no remaining doubt that the Commission can authorize uniform rates for all of SSU's customers who reside in counties over which the PSC exercises regulatory jurisdiction with respect to this company's operations.[5] On the other hand, there is overwhelming doubt in my mind as to whether the Commission has jurisdiction over SSU operations located in counties that are non-jurisdictional pursuant to Section 367.171(3), Florida Statutes, where such operations are not physically connected to the facilities of those SSU operations located in counties that are jurisdictional under Section 367.171(3), Florida Statutes. The Commission's application of Section 367.171(7), Florida Statutes, in this case extends our jurisdiction beyond the limits imposed by the legislature and into that otherwise reserved to the counties under the Florida Constitution. This is the sole aspect of the case that I disagree with and which I will discuss below.

Section 367.171(7), Florida Statutes

The most crucial aspect of our decision in this case, in my opinion, is the meaning of the word "service" as it appears in Section 367.171(7), Florida Statutes. The result reached here flies in the face of common sense and the plain meaning of the statute. The staff pointed out in its recommendation that there are 44 references to the word "service" in Chapter 367 with the connotation of a physical delivery of water and/or wastewater, with perhaps three instances that have "different" meanings.[6] This overwhelming evidence of the plain and unambiguous meaning of this simple word solidly supports the conclusion that the Legislature intended the situation where a utility's facilities physically straddled the boundary between counties of differing jurisdiction.

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[5] While the Commission, after making a finding of functional relatedness, has the discretion to impose uniform rates in those counties over which the Commission has jurisdiction, it is an entirely different issue as to whether that discretion should be so exercised. See my dissent at 94 FPSC 9:3.

[6] How these connotations were different was not explained.

See Goldstein v. Acme Concrete Corp., 103 So 2d 203 (Fla. 1958) (where the Legislature uses exact words or phrases throughout, in different statutory provisions, the court may assume that they were intended to mean the same thing.) Furthermore, it is obvious that if the legislature had intended the result reached here -- where over 100 different facilities are located in 26 counties -- that the word "system" would have been used in Section 367.171(7), Florida Statutes, in place of the word "service".

Also, although it is not an issue in this case, the inclusion in Section 367.171(7), Florida Statutes, of the interlocal agreement exception in cases where service otherwise transverses a county line, lends further credence to the proposition that the transversal be physical. Otherwise, it would not have made sense to expect that interlocal agreements would exist among far-flung counties. The only way the interlocal agreement exception makes sense in this statutory framework is if a system physically straddles a geographically compact number of counties.

In conclusion, I fear that we have overstepped our authority in interpreting this section of the law in a way that is contrary to the legislative intent. Apart from the effect it has on parties that are properly before the Commission, including the customers, the expansive meaning adopted by the Commission has the very real effect of divesting from counties powers that are otherwise reserved to them unless those powers are inconsistent with general law. Completely overlooked by the majority is the fact that the finding that the counties' powers are inconsistent with general law (i.e. Section 367.171(7), Florida Statutes) turns very delicately on our own interpretation of the word "service". Because we have chosen the very expansive meaning of the word, conflict is created to defeat the very fundamental powers reserved to the counties under the Constitution. I do not believe that the legislature intended that the PSC make those types of decisions with little or no guidance. It is not our place to substitute our judgement about where the line between centralized state authority ends and local county control begins.

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, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, 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 and/or wastewater 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.