

State of Florida



# Public Service Commission

**-M-E-M-O-R-A-N-D-U-M-**

**DATE:** September 6, 1995

**TO:** CHAIRMAN SUSAN F. CLARK  
COMMISSIONER J. TERRY DEASON  
COMMISSIONER JULIA L. JOHNSON  
COMMISSIONER DIANE K. KIESLING  
COMMISSIONER JOE GARCIA

**RECEIVED**

SEP 7 1995

**FROM:** ROB VANDIVER, GENERAL COUNSEL *R*

FPSC-RECORDS/REPORTING

**RE:** SOUTHERN STATES LEGAL OPINION - *92-0199-WS*

I asked Mr. Pruitt to review the Southern States case and to advise me on the law. His memorandum is attached for your information.

RDV/jb

Attachment

cc: Bill Talbott  
Mary Bane  
Blanca Bayo  
Chuck Hill  
Parties of Record

DOCUMENT NUMBER-DATE

08806 SEP-7 1995

002372

FPSC-RECORDS/REPORTING



# Public Service Commission

**-M-E-M-O-R-A-N-D-U-M-**

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**DATE:** September 1, 1995  
**TO:** ROBERT D. VANDIVER, GENERAL COUNSEL  
**FROM:** PRENTICE P. PRUITT, SENIOR ATTORNEY *PP*  
**RE:** SOUTHERN STATES UTILITY RATE STRUCTURE PROBLEMS

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In response to your memorandum of August 23, 1995, concerning the referenced matter, I submit the following.

It is my judgment that Southern States Utilities (SSU) should be required to make a full refund to customers who paid more than the amount they would have paid on stand alone rates. The utility can have absolutely no valid argument against this. This action has been anticipated by the Commission because a bond was required of SSU to ensure the payment of such refunds.

As to those customers who have paid less than stand alone rates as well as to those who have paid more under stand alone, it is my judgment that a utility can only charge under valid tariffs. Since the Court has rendered the uniform rates null and void, the only valid rates in existence has been the stand alone tariffs. This has to be true since a utility cannot charge any rates except those approved by the Commission, and the only approved rates are the previously approved stand alone tariff rates.

It is my judgment that there is no retroactive ratemaking involved. The Supreme Court of Florida has held that retroactive ratemaking only occurs when new rates are applied to prior consumption. Gulf Power Co. v. Cresce, 410 So. 2d 492 (Fla. 1980). Here, in the SSU case, the Commission would be applying the old, approved rates, to prior consumption.

The foregoing is true for the reason that a commission approved tariff has the force and effect of law. Maddalina v. So. Bell Tel. Co., 380 So. 2d 1246 (Fla. 1980). Further, a tariff is a law, not a contract, and has the force and effect of a statute. ACL Ry. Co. v. Atlantic Bridge Co., 577 2d 654 (Fla. 1932).

It is my opinion that SSU should be allowed to recover from customers who paid less under the uniform rates than they would have paid on the old stand alone rate structure.

It appears to me that the Commission should notify SSU that the stand alone tariffs are still in full force and effect and that they have the right to petition at any time for rate relief thereunder, or to propose and ask for approval of grouping of any number of individual functionally related systems into groups as single systems.

I have reviewed the August 17, 1995, memorandum of law by Chris Moore and I agree with her conclusion that nothing remains to be done by the Commission in Docket No. 920199-WS.

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Memorandum - Rob Vandiver  
September 1, 1995  
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My agreement is bolstered by a 1974 Supreme Court of Florida case relating to mandates. There the Court said that "It is well settled that the judgment of an appellate court, where it issues a mandate, is a final judgment in the cause and compliance therewith by this lower court (in this case the Commission) is a purely ministerial act requiring the consent of the reviewing Court permitting presentations of new matters affecting the cause." O.P. Corporation v. Village of North Palm Beach, 302 So. 2d 130 (Fla. 1974).

This would not preclude SSU from seeking rate relief on a stand alone basis or attempt to demonstrate existence of functionally related systems. This would have the "ball in their court" and have a pretty good idea of what they need to establish at the Commission level in order to satisfy the Court that the statutory requirements have been met.

PPP/jb

cc: Lila Jaber  
Chris Moore

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