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, Semionole, 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 ORDER NO. PSC-95-1199-PCO-WS ISSUED: September 25, 1995
In Re: Investigation into the appropriate rate structure for SOUTHERN STATES UTILITIES, INC. for all regulated systems in Bradford, Brevard, Citrus, Clay, Collier, Duval, Hernando, Highlands, Lake, Lee/Charlotte, Marion, Martin, Nassau, Orange, Osceola, Pasco, Putnam, Seminole, St. Johns, St. Lucie, Volusia, and Washington Counties.	DOCKET NO. 930880-WS
In Re: Application for rate increase and increase in service availability charges by Southern States Utilities, Inc. for Orange-Osceola Utilities, Inc. in Osceola County, and in Bradford, Brevard, Charlotte, Citrus, Clay, Collier, Duval, Hernando, Highlands, Hillsborough, Lake, Lee, Marion, Martin, Nassau, Orange, Osceola, Pasco, Polk, Putnam, Seminole, St. Johns, St. Lucie, Volusia, and Washington Counties.	DOCKET NO. 950495-WS

ORDER DECLINING TO WITHDRAW FROM PROCEEDING

This cause comes on for consideration on a Verified Petition to Disqualify or, In The Alternative, To Abstain (petition) with accompanying affidavits which was filed on September 13, 1995, by

Citrus County, the Sugar Mill Woods Civic Association, Inc., and the Spring Hill Civic Association, Inc. (Petitioners), in those of the above dockets in which the aforesaid County and Civic Associations are respectively parties. The petition seeks disqualification or abstention from proceeding further in these docketed proceedings based on facts and law alleged to require that result. This petition post-dated by some six weeks the commencement of petitioners' participation in Docket No. 950495-WS and by two and three years, respectively, the commencement of the other two dockets.

On September 20, 1995, Southern States Utilities, Inc. (Utility), filed a Memorandum In Opposition To Verified Petition To Disqualify, Or In The Alternative, To Abstain (opposition). The Utility's opposition alleged that the petition failed to state factual and legal grounds for disqualification.

Petitioners set out the facts relied on most succinctly at pages 8-11 of the petition. Therein, reference is made to a March 7, 1995 meeting of the Commerce Committee of the Florida Senate in which Senate Bill 298 was heard. Senate Bill 298 is described as legislation which would have prohibited "uniform rates." Testifying in support of the bill were its sponsor, Senator Ginny Brown-Waite, Jim Desjardin, a member of the utility committee of a petitioner association, and Michael B. Twomey, petitioners' attorney. The petition also references my presence at the meeting and testimony about SB 298, with specific reference to my concern about "the elimination of uniform rates as a 'tool' [the commission] could use." Petition p. 9. The petition further describes an incident following the consideration of SB 298 in which I am said to have "loudly, and publicly" accused petitioner attorney Michael B. Twomey of calling me a "liar" during his committee testimony on SB 298 and threatening to "get him" with every legal means at my disposal if the alleged behavior occurred again. The recitation by petitioner of the facts concludes with summaries of the affidavits of Mr. Desjardin, Mr. Twomey and Senator Brown-Waite. These affidavits are said to verify that, based on my testimony re: SB 298 and the post-meeting incident described above, petitioners have a well-founded belief that, absent my disqualification, they will be unable to obtain fair and impartial adjudication in the dockets at issue, all of which concern the application of uniform rates to those they represent.

DISCUSSION

Applicable Standards

Between pages 2 and 7 of the petition, petitioners set out extensive citations of legal authority in support of their theory that disqualification is required. However, as noted by the Utility, significant portions of the authority relied on by petitioners have been repealed or superseded. Repealed provisions include Rule 1.432, Florida Rules of Civil Procedure,[1] and the Canons of the prior Code of Judicial Conduct.[2] Moreover, petitioners' conclusion that "[t]he standard to be used in disqualifying an individual serving as an agency head is the same as the standard used in disqualifying a judge. . ." is no longer correct. The case that conclusion relied on, City of Tallahassee v. Florida Public Service Commission, 441 So.2d 620 (Fla. 1983), has been superseded by Bay Bank & Trust Company v. Lewis, 634 So.2d 672 (Fla. 1st DCA 1994). Therein, the Court stated:

> The 1983 Florida Legislature deleted the phrase "or other causes for which a judge may be recused" from section 120.71, Florida Statutes, so we must assume that the statute was intended to have a different meaning after its amendment [citation omitted]. Thus, while a moving party may still disqualify an agency head upon a proper showing of "just cause" under section 120.71, the standards for disqualifying an agency head differ from the standards for disqualifying a judge. This change gives recognition to the fact that agency heads have significantly different functions and duties than do judges. Were we to give section 120.71 the same meaning as that given it in City of Tallahassee v. Florida Public Service Commission, the 1983 amendment to section 120.71 would serve no purpose whatsoever.

Bay Bank, supra, at 678-9.

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[1]See, The Florida Bar Re: Amendment to Rules of Judicial Administration, 609 So.2d 465 (Fla. 1992).

[2]See, In re: Code of Judicial Conduct, 643 So.2d 1037 (Fla. 1994).

Thus, the standards that are directly applicable to this matter include Section 120.71, Florida Statutes, as construed by the Court in Bay Bank, and Rule 25-21.004, Florida Administrative Code, promulgated by the Commission. Section 120.71, Florida Statutes, states in pertinent part that:

> (1) . . . any individual serving alone or with others as an agency head may be disqualified from serving in an agency proceeding for bias, prejudice, or interest when any party to the agency proceeding shows just cause by a suggestion filed within a reasonable period of time prior to the agency proceeding.

Rule 25-21.004, in turn states, in pertinent part:

> (1) A commissioner may be disqualified from hearing or deciding any matter where it can be shown that the commissioner has a bias or a prejudice for or against any party to the proceeding or a financial interest in its outcome.
>
> (3) A petition for disqualification of a commissioner shall state the grounds for disqualification and shall allege facts supportive of those grounds.

Other statutes which bear on these matters include Section 350.041(2)(g) and Section 350.05, Florida Statutes, which speak to the professional conduct of commissioners and the independent, objective and non-partisan manner in which they are to perform their duties. The rest of the authority cited by petitioner, whether repealed or superseded, is not directly applicable or controlling.

Accordingly, the limitation of a judge to the bare determination of legal sufficiency in considering a disqualification motion,[3] and the prohibition against his passing on the truth of the facts alleged are not controlling either, in light of Bay Bank, in an agency head's consideration of a

[3]See, e.g., Bundy v. Rudd, 366 So.2d 440 (Fla. 1978).

disqualification motion.[4] With all of the foregoing in mind, I will apply the assertions in the petition to the applicable standards to test whether the petition states a legally sufficient "just cause" requiring disqualification.

Remarks at the March 7, 1995, Senate Commerce Committee Meeting

Based on the petition and accompanying affidavits, I conclude that my testimony at the committee meeting does not constitute just cause for disqualification. There is not a single fact presented relevant to the actual testimony I presented which demonstrates it to be beyond the "discussion of the administration of justice" explicitly permitted by the very judicial canon, formerly Canon 4(B) of the Code of Judicial Conduct, relied upon by petitioners. That canon, even though relevant to the stricter standard applicable to judges, allows those judges, and therefore, a fortiori, an agency head:

> [T]o appear at a public hearing before an executive or legislative body or official on matters concerning the law, the legal system, and the administration of justice, and [to] otherwise consult with an executive or legislative body or official, but only on matters concerning the administration of justice.[5]

As to whether my testimony was limited to discussing the administration of justice, the petition offers no facts whatsoever, but only a legal conclusion unsupported by facts:

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[4]Because this motion can be disposed of based only on the facts alleged in the petition, the more stringent standards are applied herein.

[5]The repealed canon is quoted herein because petitioners rely on it. However, it should be noted that the revised canon, although somewhat changed, retains the ability of agency heads to discuss with legislative bodies matters on the law, the legal system or the administration of justice. See, Canon 4(C), Code of Judicial Conduct.

> She was clearly engaging in consulting with a legislative body, but on matters that clearly could not be characterized as "only concerning the administration of justice."

Petition, p. 11.

However, only a single word of my testimony is cited by petitioners, the word "tool," cited at page 9 of the petition. The sentence of testimony containing that word appears at page 15 of the transcript:[6]

> We would urge you not to take away one tool in our tool chest that allows us as economic regulators to deal with the significant water problems that are coming. [emphasis supplied]

This testimony is demonstrably aimed at the administration of justice in the context of the Commission's economic regulation of water resources. It does not speak at all to the application or non-application of uniform rates to any specific ratepayers or to litigation concerning any ratepayers, including petitioners. Moreover, the listener reaction reflected an understanding of the limited scope of the testimony:

> **Unidentified Speaker:** So, in other words, unified rates is the commission policy where the commission thinks it's a good policy, and is not their policy where they don't think it's a good policy.
>
> **Commissioner Kiesling:** That's right. It's one form of ratemaking that we view as part of our arsenal.

Transcript, p. 25.

The fact that petitioners took it differently and had the feeling or perception that the testimony was directed toward supporting the imposition of uniform rates on them is of no moment. That feeling or perception is not a "fact." See, e.g., City of

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[6]Petitioners quotation should have referenced the tape or a transcript of the Committee Meeting, a copy of which is attached.

Palatka v. Frederick, 174 So. 826, 828 (Fla. 1937). If there was anything about petitioners' cases that was impermissibly addressed in the testimony it should have been cited as constituting a fact in support of just cause for disqualification. Conversely, where only the single word "tool" was cited, and the context of the testimony containing that word did not concern the imposition of uniform rates on any specific ratepayers, let alone petitioners, or litigation involving petitioners, no fact has been adduced demonstrating the testimony to be other than a neutral discussion about the administration of justice. The testimony cited above specifically allowed for the possibility that a given application of uniform rates might be found to be "bad," a determination which was in the Court's jurisdiction as to petitioners, not the Commission's. Moreover, concern that the testimony was presented "forcefully" assumes that discussions which are forceful cannot be limited to the administration of justice. These assumptions and conclusions are arrived at:

> . . . from a tone of voice or a manner which [is] conceived to be indicative of bias or prejudice against the parties in the case.

As such, they are not facts indicating a just cause for disqualification under Section 120.71, Florida Statutes, for bias, prejudice or interest. City of Palatka, supra. To conclude otherwise would result in a ban on the ability of commissioners to respond to the invitations of legislators to address such matters.[7] That result would be inimical to the administration of justice which is the very subject of the judicial conduct canon petitioners claim to rely on.

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[7]Petitioner's claim that the testimony was "unsolicited" is unsupported because Senator Brown-Waite's affidavit is based on a lack of knowledge and is therefore legally insufficient:

> I had not solicited Commissioner Kiesling's attendance or comments at the Committee meeting and am not aware that any other Senator invited her to speak on the bill. [emphasis supplied]

See, e.g., Gieseke v. Grossman, 418 So.2d 1055, 57 (Fla. 4th DCA 1982).

The Post-Meeting Encounter

There are numerous cases in which extra-judicial occurrences involving judges and attorneys have resulted in disqualification of the judge.[8] For example, a judge's tirade about a lawyer's failure to support that judge for other judicial positions was held to merit disqualification in McDermott v. Grossman, 429 So.2d 393 (Fla. 3rd DCA 1983). Again in Town Center of Islamorada, Inc. v. Overby, 592 So.2d 774 (Fla. 3rd DCA 1992), an extrajudicial dispute which began at a bar luncheon at which an attorney offended the judge by announcing his intent to sue the judges of that circuit warranted disqualification.

However, upon careful reflection, I conclude that even under the more stringent standard applicable to judges, the so-called "strained relations" cases are distinguishable from this matter. As a result, I further conclude that the post-meeting encounter does not constitute just cause for disqualification on the grounds of bias, prejudice or interest. Section 120.71, Fla. Stat.; Rule 25-21.004, Fla. Admin. Code.

The difference between this case and those just cited is that there is nothing wrong with an attorney choosing not to support a judge for a different judicial position. Therefore, being on the receiving end of a tirade about it may cause legitimate concern that the judge is prejudiced. Likewise, suing the judges in the circuit is not improper, and the fact that a judge was offended by it may reflect prejudice against the attorney for his having sued the judge and the judge's colleagues.

In contrast, an attorney that makes a statement that he knows to be false or with reckless disregard as to its truth or falsity "concerning the . . . integrity of a judge . . ." violates Rule 4-8.2 of the Florida Bar's Code of Attorney Conduct. This is true whether or not the statements are made extra-judicially. See, The Florida Bar v. Stokes, 186 So.2d 499 (Fla. 1966) (disparaging and unfair comments about a local judge made by attorney during radio program which judge had no opportunity to rebut required that attorney make a public apology).

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[8]Even though the disqualification of judges is arguably not a standard which must be met, Bay Bank, supra, consideration of that more stringent standard adds by that stringency to the confidence with which these issues are addressed here pursuant to Section 120.71 and Rule 25-21.004.

The Florida Supreme Court expounded at length on the issue of recklessly impugning the integrity of judges in In re: Shimek, 284 So.2d 686 (Fla. 1973). In that case, the attorney filed a memorandum in federal court which claimed that:

> The state trial judge avoided the performance of his sworn duty. . . . A product of [the prosecutorial] system who works close with Sheriffs and who must depend on political support and re-election to the bench is not going to do justice.

The District Court judge concluded that this language was:

> A scurrilous attack upon members of the state judiciary, completely unwarranted by the record before it.

284 So.2d 686.

The Florida Supreme Court then noted the following:

> Nothing is more sacred to man and particularly, to a member of the judiciary, than his integrity. Once the integrity of a judge is in doubt, the efficacy of his decisions are (sic) likely to be questioned. . . . While a lawyer as a citizen has a right to criticize such officials publicly, he should be certain of the merit of his complaint, use appropriate language, and avoid petty criticisms, for unrestrained and intemperate statements tend to lessen public confidence in our legal system.

284 So.2d 688-9.

Several statements of Mr. Twomey, at page 31, lines 23-25 and page 32, lines 1-20, recklessly impugned my integrity. For example, on page 32 of the transcript beginning at line 19, Mr. Twomey states:

> The $150 is a scare tactic, it's dishonest, it's not true. You shouldn't be sucked in by this.

This hardly comports with either the requirements of Rule 4-8.2 or Shimek. The point is not that an attorney may not disagree, but that the disagreement could have been accomplished without violating these precepts, just as my testimony was accomplished without personally abusing anyone else.

As stated by the Court in Shimek:

> Judges are subject to fair criticism. The attorney is bound to use restraint. His statements must be prudent, not rash, irresponsible, and without foundation.

The petitioners' own characterization of the post-meeting encounter confirms that these concerns, rather than any substantive issue involving the clients or their cases, were the subject of the encounter:

> Commissioner Kiesling berated Mike Twomey for calling her a "liar" and publicly threatened to "get him" with "every legal means at her disposal" if the alleged behavior occurred again. [emphasis supplied]

Unlike the "strained relations" cases, petitioners cannot deduce prejudice from this encounter because, given the attorney's misconduct, it would be proper for the remonstrance and warning to be given at the hearing, should the same conduct occur there. In contrast, it obviously would not be any more proper for the judge in McDermott to lambaste the attorney at the hearing for his failure to support her for other judicial positions than it was to do so extra-judicially.

Finally, as to this issue, showing anger and displeasure has not been found to be a just cause for disqualification if caused by the misbehavior of the defendant himself, let alone that of his attorney:

> For a trial judge to indicate anger and displeasure in a direct criminal contempt proceeding in which the defendant was found guilty does not in and of itself indicate that the trial judge is prejudiced against the defendant. The record in this case reflects that if the trial judge was angry and displeased, it was caused by the defendant's

> conduct. Further, there is nothing in the record to reflect any prejudice of the trial judge during the . . . later proceedings.

Dempsey v. State, 415 So.2d 1351 (Fla. 1st DCA 1982). Similarly, in Oates v. State, 619 So.2d 23 (Fla. 4th DCA 1993), rev. denied, 629 So.2d 134 (Fla. 1993), the court found that the judge's remark calling defendant an "obstinate jerk" did not require disqualification where defendant persisted in engaging in argumentative exchanges with the judge. The same is true of this case as well.

Timeliness

Section 120.71, Florida Statutes, requires that a petition be filed within a reasonable time prior to the proceeding. There are no rules or case law defining "prior to the proceeding." Rule 25-5.108 of the Model Rules requires a petition to be filed 5 days prior to final hearing. The final proceeding in Docket No. 920199-WS was held November 6 through 11, 1992, prior to my appointment to the Commission. A decision on remand was made on September 12, 1995, before the filing of the subject petition. The subsequent decision of the Commission on August 12, 1995, was not a separate or new proceeding, and the decision scheduled for September 26, 1995, is merely the conclusion of the deliberations from September 12, 1995. Therefore, the petition as applied to Docket No. 920199-WS is untimely as it was filed after the final hearing. Even if it were not untimely, petitioners have clearly waived their right to seek recusal in this case by filing after the subsequent Agenda Conference decision.[9]

The final hearing in Docket No. 930880-WS was held on April 14, 1994. The case is currently pending on appeal. On August 29, 1995, the Commission requested the appellate court to relinquish jurisdiction in order to allow the Commission to re-open the record for the purpose of conforming the Commission's decision on appeal to the appellate court's opinion in Commission Docket No. 920199-WS. If jurisdiction is relinquished, the Commission will not conduct a new proceeding. The full Commission will merely be

[9]On September 12, 1995, at the beginning of argument at the Agenda Conference, attorney for the petitioners did state that he would be filing a petition for recusal. He did not make an oral motion for recusal or seek a continuance based on his imminent motion. Commissioner Kiesling made no comments on the motion.

taking limited evidence to amplify the trial record. Therefore, the petition is untimely having been filed after the final hearing, inappropriate to the extent the appellate court has jurisdiction over the case, and unfounded as to any future amplification of the record.

In the third case in which petitioners seek recusal, Docket No. 950945-WS, the final hearing has not occurred. However, petitioners knew that this Commissioner was assigned as prehearing officer as early as July 24, 1995, when counsel for petitioners filed a request for full commission review of Procedural Order PSC-95-08290-PCO-WS. Also at that time, counsel for petitioners knew or should have known the dates set for numerous customer service hearings, as well as those for agenda conferences on such matters as the setting of interim rates. Counsel for petitioners has requested other commissioners to order Commissioner Kiesling recused at two of the public hearings held on September 14, and September 20, 1995, where no decisions are made by the Commission, where counsel for petitioners did not allege any further bias or prejudice has occurred, and where those hearings were scheduled prior to the filing of the petition. In fact, it was the scheduling of these hearings to which petitioners objected in their July 24, 1995 motion for full commission review of that procedural order.

The nature of the operation of the Commission constituted with five members is significantly different from the operation of the circuit or county courts and even different from the operation of the Division of Administrative Hearings where such courts have a pool of judges or hearing officers from which to draw. Unlike the recusal of a Commissioner, the recusal of one judge among a pool of judges may be accomplished without a significant danger of permitting the intended or unintended manipulation of the decision-making process.[10] It is disruptive of the orderly process of the Commission, particularly when proceeding to hearing with all five commissioners in their quasi-legislative role of rate making,[11] to fail to bring the matter of recusal to the attention of the Commission at the earliest practical moment.

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[10]In City of Palatka, supra, at 827-828, the Florida Supreme Court held that it would have been improper for the judge to disqualify himself based on a legally insufficient pleading. This decision has higher significance in view of my responsibilities as a part of this collective agency head. Bay Bank, supra.

[11]United Telephone Co. v. Mayo, 345 So.2d 648 (Fla. 1977), at 654 (the fixing of rates is not a judicial function).

Further, petitioners are customer intervenors to this rate proceeding. Counsel for petitioners knew or should have known that the full commission would be assigned to hear Docket No. 950495-WS. Therefore, counsel for petitioners knew or should have known prior to representing his clients that this commissioner would be hearing this case. In Town Center of Islamarada v. Overby, supra, the court held that ordinarily a party may not bring an attorney into a case after it has been assigned to a judge and then move to disqualify on the grounds of bias against the attorney. So here, where Rule 25-22.039, Florida Administrative Code, provides that an intervenor takes the case as he finds it, where counsel for petitioners knew of his belief of bias prior to representing petitioners in this cause, and where counsel had an opportunity to raise this issue at least upon their first filings in this case, petitioners have waived their right to seek recusal.

CONCLUSION

As discussed above, the standards relied on by petitioners are inapposite. Applying applicable standards, the petition is conclusory, untimely and is not legally sufficient to support disqualification. Based on the foregoing, I hereby decline to withdraw from the proceeding.

By ORDER of Commissioner Diane K. Kiesling, as Prehearing Officer, this 25th day of September, 1995.

DIANE K. KIESLING, Commissioner and
Prehearing Officer

(S E A L)

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.

Further review of this interlocutory order shall be pursuant to Rule 25-21.004, Florida Administrative Code.

(Tape 2 or 3, March 7, 1995, Senate Commerce and Economic Opportunity.)

UNIDENTIFIED SPEAKER: Senator Brown-Waite, you're recognized to discuss an explain Senate Bill 298.

SENATOR BROWN-WAITE: Thank you very much.

Senate Bill 298 came about because of the Public Service Commission action.

The Public Service Commission in 1992 went around the state indicating to customers that SSU, which is a water and wastewater company, it was seeking a rate increase; that they needed a rate increase. The customers were told what the company was asking for. The company originally applied for stand-alone rates. The point at which it was taken back to the Public Service Commission after all of the public hearings, the Public Service Commission decided that they were going to combine all of the water and wastewater companies into a uniform rate.

Now, what this meant was that we had some major subsidization of one utility customer subsidizing another utility customer. And that might work in the traditional electric generating facilities, and certainly in the telephone business they work. But when you have stand-alone water systems which are not interconnected and stand-alone water treatment systems which are not interconnected, it doesn't

make a whole lot of sense.

Let me just indicate to you that this subsidization doesn't set real well with people, and one of the reasons being because they are stand-alone units, if one system goes down, for example a system in Citrus County, the system which is to the south in Hernando County is not connected in any way, shape or form. So there is not any reason why this subsidization should take place. There's no benefit being received.

Additionally -- so they're paying and they don't even get a backup system. In SSU's case, in Hernando County -- and I have someone here from Citrus County who would like to speak to you -- in Hernando County alone over and above the cost to operate the system, had it been treated as a stand-alone system, it was $1.8 million that was taken out of the county to subsidize other systems.

There's some problems with uniform rates where there's no uniform connection with the system. Customers who paid significant connection charges to a utility lose the benefit of the lower monthly rates because they are then grouped for ratemaking purposes with systems with either lower initial contributions or no contributions at all.

Additionally, and Chairman, we're talking about water conservation, if one group of customers receiving one benefit is subsidizing another group of customers, there's no

incentive there to preserve water. So we also have those concerns.

Jim Desjardin from Citrus County is here. He's from Sugarmill Woods. Their system was negatively impacted also. And I'd like to ask Mr. Desjardin if he would come up.

UNIDENTIFIED SPEAKER: Let's see if there are any questions for you. Are there any questions for Senator Brown-Waite at this time? Senator Holzendorf.

SENATOR HOLZENDORF: Thank you, Mr. Chairman.

Having several in my district, and I've not heard of this complaint -- Senator Brown-Waite, what generated this? Is there some specific problem that is being caused by this, or is it just happening in this specific area and should we be doing this statewide, or is it restricted to a local area and could be done that way?

SENATOR BROWN-WAITE: In this particular case, Senator Holzendorf, it was the SSU rate case which was before the Public Service Commission. They were known for -- they applied for stand-alone rates, and it was the Public Service Commission that decided that they were going to lump them all into a statewide rate for uniform treatment of all of the water and wastewater systems.

One of the problems with this is first of all the public wasn't notified. You can't go back and remedy that, but this whole issue is currently in court. But more

importantly is the fact that there's no benefit derived, and certainly we're not encouraging water conservation if this subsidization is taking place. If you're not paying the true cost of the water production in your area, then you really don't have a relationship to any conservation goals that we, as a state, or the counties may be setting up.

So to answer your question, it was statewide. There were some winners and some losers, quite honestly. But if we continue this, even those areas that, quote, "running from this" may be losers in the future. These are stand-alone systems. They are not interconnected.

SENATOR HOLZENDORF: What will this do to the rate of those systems if we were to take up this bill? What would it do to the customer rates?

SENATOR BROWN-WAITE: This isn't retroactive so it won't impact the -- it will not impact the decision that currently is before the Courts. And one of the attorneys, I think, from the Attorney General's office is here to speak to that.

UNIDENTIFIED SPEAKER: Thank you, Mr. Chairman.

Senator Brown-Waite, to follow along with Senator Holzendorf's question, I can understand how the winners would be upset with having to pay some subsidy here, but I'm also told that were it not for the subsidy, some of those payers who are now paying about $30 a month, would have to begin

paying about $150 a month. I mean that's a real significant job. And I'm just wondering if this isn't one of those cases where there might ought to be a little subsidy just so more of those rural remote areas can have an affordable rate.

SENATOR BROWN-WAITE: Senator, it doesn't tend to be the rural worry among areas. There's some very wealthy areas that benefitted from it. They have a small customer base. So it's not -- it's not the horror story that may have been told. There are some small water utility companies out there that have been bought up by SSU and the rates have gone up. They would have gone up regardless of who purchased them.

SSU didn't even apply for the uniform rate. They were originally applying for the stand-alone rates. So, will some rates will go up? Yes, some rates will go up. Customers who paid a substantial amount into the construction of the utilities which are in their own areas, residents who paid substantial amounts for the construction of the plants, they're the ones who are really paying twice because they are also subsidizing those water systems out there where they take little or no payment as the construction was continuing.

UNIDENTIFIED SPEAKER: Just a follow up, Chairman.

So you believe the $30 to $150 is not accurate?

SENATOR BROWN-WAITE: I don't have those figures so I can neither substantiate nor can I confirm nor deny those figures.

UNIDENTIFIED SPEAKER: Maybe somebody could speak to that because, you know, that's significant.

UNIDENTIFIED SPEAKER: We have a number of folks that are going to want to come forward, Senator Danzer. Senator Beard.

SENATOR BEARD: Senator, did you say this issue is in the courts at this time?

SENATOR BROWN-WAITE: This particular case that the Public Service Commission had already ruled on, yes, it is in the courts. This is not retroactive.

UNIDENTIFIED SPEAKER: Senator Burke.

SENATOR BURKE: What's the public policy reason for the legislator overruling a decision by the Public Service Commission?

SENATOR BROWN-WAITE: Senator, I don't say here overruling it, I'm saying that they shouldn't do this in the future.

I think if the utility company said, "Give us uniform rates," that would be one thing. But the Public Service Commission took it upon themselves; the constituency out there was not properly notified that this was going to be a rate that they would be raised to. At the public hearings -- and I attended some of the public hearings -- they were told the rate that the company was asking for and they were told the interim rate that the Public Service Commission

electricty or like telephone lines. There isn't a backup there. They're totally stand alone, separate systems.

Senator Danzer, did I answer your questions?

UNIDENTIFIED SPEAKER: I just wanted to ask you, how far would you -- how much would you extend the legislature into managing that utility? I think the questions are sort of -- most of us are lucky to get into that issue of directly trying to legislate on issues that the Public Service Commission is disposing of. To do so, we stand here inundated -- I had a phone note in my own county I think Tom sent, they said wanted area wide service. And they got it and handling that -- my mother's phone bill went up $3. (Unintelligible) rate and have a telephone company and they say you get to talk to your son. (Laughter) Beneficially to that would be I (unintelligible) and then -- I'd ask that if we were sitting freshmans I should maybe file a bill and say we can't do that. (Unintelligible)

SENATOR BROWN-WAITE: Senator, there's a little difference with telephone rates because, you know, you call the different places and while you may be subsidizing they cost you more for calling one area, there's a subsidization from another, but everyone benefits depending on what their calling patterns are.

Let me kind of compare this to a legislative decision that all of the professions would pay their own way.

If you'll recall, we set a legislative policy that all of the professional regulation groups out there, that they were going to be paying their own way. This really isn't a paying-their-own-way system which had been in existence for a very long time.

I have a handout which I think (overtalking here) will be one of the people speaking later, and Senator Danzer, when you get the handout, it does have in there the list of what the charges would be. And some -- the largest increases are to industrial development parks, they're not residential. So what you have is a lot of residential customers who are not just subsidizing other residential customers, there are also some strip shopping centers and areas such as that. So if you were given those figures that may be the area that does. I'm looking down here but none of them equal that much.

UNIDENTIFIED SPEAKER: Senator Dudley and then Senator Meadows who has been waiting.

UNIDENTIFIED SPEAKER: Mr. Chairman, since Jack Shreve is here, he's the Public Counsel, I'd like to ask him a couple of questions on this issue either now or when we get into the testimony.

UNIDENTIFIED SPEAKER: Why don't we ask him to come up when we start taking --

UNIDENTIFIED SPEAKER: I'd like to ask him some questions.

UNIDENTIFIED SPEAKER: Okay. Senator Meadows.

SENATOR MEADOWS: Yes. I was just thinking, even though they're subsidizing, you know, to some degree, if we take them out in individual units, stand on their own and there are other environmental regulations that come up, wouldn't they experience, you know, a dramatic increase in order to meet those requirements if they're not under the large umbrella?

SENATOR BROWN-WAITE: Senator, that's an excellent point that you make and each of those environmental regulations apply down to the local plant. So the people at the local level, regardless of whether it is one of the plants that is receiving the subsidy or giving a subsidy, that would be affected at the local level, which is -- those plants which are better maintained, where people pay more money in for the initial start-up of it and there were some of the original plants. As various small developers have gone out of business, SSU has bought up many of these systems, the small systems out there. And many of them were not very well maintained. Now, did those people have artificially low rates for many years? Yes, they probably did, Senator. And if DEP comes in and imposed new regulations, it will be on a -- if you need the state of the art you wouldn't have to comply with it system by system, which at this point I can't tell you whether it's those that receive the subsidy or those that

didn't receive the subsidy. And I think until we looked at the regulations we couldn't tell either.

UNIDENTIFIED SPEAKER: I just have a concern about that.

UNIDENTIFIED SPEAKER: We have a number of folks come in before us to testify on the bill. Senator Meadows hopefully that will give you some more opportunities.

The first person is Diane Kiesling. Ms. Kiesling.

COMMISSIONER KIESLING: Thank you, Mr. Chairman, members of the committee, I'm Diane Kiesling and I'm a Commissioner on the Public Service Commission.

I think initially I need to clarify something that yes, in fact, that was a case in 1992 that was decided in 1993 that of imposed uniform rates, and that is the case that is on appeal. However, only two Commissioners voted on that case because of a -- some quirks of fate that ended up with some Commissioners leaving, and as a result the Public Service Commission made a decision to reopen this matter and to do a thorough investigation of uniform rates. The Commission reached its decision to approve uniform rates or single tariff pricing as it's more commonly called, for Southern States Utilities after months of research and fact-finding, and a great deal of input from customers who are the ultimate stakeholders in the decision.

In the investigation docket we completed last

September the Commission held customer hearings in 11 cities. Senator Holzendorf, we held a hearing in Jacksonville, and Senator Dudley, we held one in Fort Myers, we held one in Stuart, and for those of you who represent the Tampa Bay area, we did hold one in Temple Terrace that covered the Tampa Bay area. We held a hearing for customer testimony in Ocala, and Sunny Hills and Homosassa Springs, in Brooksville, and Deltona. Senator Jennings, we held one in Orlando, and we then held one in Sarasota County.

At each of these customer meetings there were customers who testified on either side of the uniform rate issue. The transcript of the customer hearings alone is 1,221 pages. The Commission then held five full days of technical hearings on the issue. We heard from 25 expert witnesses, again on both sides of the issue.

After considering all of the evidence placed into the record, and reviewing briefs that were filed by all of the parties, the Commission voted 3 to 1 to approve the continuation of the statewide uniform rates for Southern States Utilities.

We recognize, and I'm sure by our 3 to 1 vote you can understand that we recognize that there are pros and cons on either side of this issue. Some of the disadvantages of single-tariff pricing are that some customers lose some of the benefit of their contributions in aid of construction which

they pay up front when they were grouped for ratemaking. However, this disadvantage is under study and we are still looking for ways to mitigate this disadvantage.

Another disadvantage is joint rates may not reflect facility-specific cost. Also we looked at, as disadvantages, the possible loss of flexibility to deal with geographic concerns, the subsidies of cross-facilities based on treatment type, cross-subsidies due to phase of development in the service area. And I would also mention that we did look at the possibility of pulling out some of the high cost treatment like reverse osmosis from this formula, and that also is still under study.

Some of the advantages of single tariff pricing are that it insulates customers from rate shock when major capital improvement can be spread over a large customer base. There are also lower rate case expenses when systems are combined for ratemaking. For a large company such as SSU that holds a number of smaller facilities there's economies of scale that are passed on to all of the customers. There's also ease of understanding by the customers, reduced frequency of rate case filings, and a possible lower cost of capital to the entire system.

While Southern States Utilities is the largest water and wastewater utility where uniform rates or single-tariff pricing has been used, there are approximately 20 other water

utilities in the state of Florida that have uniform rates. One utility has had uniform rates in place for 20 years. Also many city and county-owned systems use uniform rates currently. And again, Senator Holzendorf, I would point out one of the significant ones is Jacksonville Suburban which has a number of small systems in Duval, Nassau and St. Johns County, none of which are interconnected, and all of which have had uniform rates for quite some time.

I think getting away from the controversial SSU case for a moment, what we at the Commission want you to consider is the long run ramifications to the water and wastewater industry of the changes that are proposed in this bill.

Single-tariff pricing is currently utilized and in place in 20 other states in the United States. Research shows that only the state of Maine has outlawed the use of this tariff pricing mechanism, and that was quite some time ago, and I would again indicate they're not a growth state that has the problems Florida has.

Presently there are more than 2,000 small systems, water and wastewater systems, in Florida. Most of those because of environmental regulations that are running up high costs and because of deteriorating infrastructure, are going to require some kind of regulatory intervention to continue to provide safe affordable service.

One major contributing factor to their plight is

their small size and their increased expenses under such things as the Safe Drinking Water Act.

The Commission has concerns about the bill being considered here today because it would prohibit us from using single-tariff pricing to help in the consolidation of some of these troubled small systems. The issue of rate equalization must be addressed by regulators as an acquisition incentive, and a means to fully realize the benefits of the larger more viable utilities. We believe this ratemaking concept is a powerful economic incentive to encourage consolidation and restructuring of the water and wastewater industry in Florida. We would urge you not to take away one tool in our tool chest that allows us as economic regulators to deal with the significant water problems that are coming.

UNIDENTIFIED SPEAKER: Senator Hargert (sic).

UNIDENTIFIED SPEAKER: Yes. What's your name again?

COMMISSIONER KIESLING: Diane Kiesling.

UNIDENTIFIED SPEAKER: Monticello?

COMMISSIONER KIESLING: Monticello Used to be, yes, sir. I'm in Monticello now. I used to be in Greensboro, worked at the Quincy State Bank. I knew you then, but be that as it may.

UNIDENTIFIED SPEAKER: Get his credit history.

UNIDENTIFIED SPEAKER: This area of regulation has a history to it. In reading the Staff analysis it seems like

historically it says water and wastewater utility rates has been set on a system-by-system basis. That's what they think the history to be.

COMMISSIONER KIESLING: Historically that is the usual way, although in Florida that are 20 systems that are on uniform rates currently, and some have been for as long as 20 years, so in certain circumstances it is one of the tools that we could use in fashioning appropriate tariffs.

UNIDENTIFIED SPEAKER: Now, also in this whole scheme of things, any county has a right to regulate the water themselves.

COMMISSIONER KIESLING: Yes, sir, they sure do.

UNIDENTIFIED SPEAKER: And wastewater. So that seems to set the spirit that this is not sort of an unified -- the legislature, when it crafted this legislation, I'm just trying to get the legislative intent and then find out where it's going. In other words, in order to get out of the hole I'm trying to figure out how we got in it. The legislation seemingly is one that has options for counties to get in and get out.

COMMISSIONER KIESLING: Yes, sir.

UNIDENTIFIED SPEAKER: Now, if we then start building this statewide system with all of its economies of scale, does that not mitigate against the option for a county or make it very difficult for a county to exercise its option

because we have been put in -- we built something that may not have been intended by the original regulatory scheme, I want to just make -- I may decide to vote with the PSC, but I want to try to figure out whether or not we've gone a little too far and then we've blessed something, or whether we're -- but at the other hand, there's a macro analysis that you can make where it might be fair to everybody, but then when you start going down to the community level and doing a micro analysis it may be totally unfair. I'm trying to find where the equities lie. But from a historical point, I want to figure out where we come from and then whether or not this statewide scheme, even though it may be wise, it might be wise for us to have one uniform school district all across Florida, but its history wouldn't permit us to do that. So I'm just asking what about the historical perspective on it.

COMMISSIONER KIESLING: Well, I'll be happy to give you what I can give you considering I have been on the Commission since the December 1973 -- I mean 1993, I'm sorry, I wish it was '73.

But let me also say that -- let me also say, you know, we're not asking you to bless a PSC position. I think if you look at my sign-up card, we did not take a position pro or con. Our view is that we are a branch of the legislature and we're simply trying to give you information about what will happen as economic regulators if you take one of these

tools away. So to the extent that, you know, you view us as being opposed to this bill, I want to clarify that. We're not happy with it but we're not overtly standing before you to oppose it.

Now, let me get back to the history. The Southern States case involved 127 systems. None of those systems were in a county that has retained the county option. Those systems were all in the counties that have turned regulation over to the PSC.

Now, what I can tell you is that in another case, which is still pending, the question of how to apply another statutory section relating to the interrelationship between counties that cross county boundaries is up for consideration, and it is in that case that there may be -- that the question of what to do with Southern States small systems that are in nonjurisdictional counties will be determined.

So, I heard the premise that underlay your question was that this somehow went contrary to the county option, and, in fact, our decision on uniform rates would not -- did not impact any of the counties that have retained that option.

UNIDENTIFIED SPEAKER: I understand that. But at any day one of those counties can come and say, "We want to regulate our own."

COMMISSIONER KIESLING: Yes, they can.

UNIDENTIFIED SPEAKER: Okay. Well, we set up a

didn't see you sitting out there when I was asking for Mr. Shreve to come forward.

COMMISSIONER KIESLING: No problem.

SENATOR DUDLEY: I'm still going to request that he come forward. But the thing that is a little puzzeling to me, and I'm trying to look beyond the fact that I represent one of two systems here in the two county area whose rates would go up under a stand alone. I'm trying to look purely at the public policy.

I guess my question is -- and I just may have predated -- in fact, I'm sure this did predate your joining the Commission -- but since there was no clear statutory authority, as I understand it -- although I guess that's for the court to decide -- for the Public Service Commission to do an a system-wide rate, probably because they had never had it before. All of these companies used to be owned by little individual developers, in some cases big individual developers. And it's a fairly recent advent that I think there's been -- the multiple system operators that have come on line. But in the absence of clear statutory authority I don't recall the Public Service Commission ever coming here in the 12 years I've served here and asking for authority to do this, so I guess my question has to be kind of hypothetical to you, as you read and understand the law, and I've always felt you had an extraordinarily good legal background in your

previous life -- at least you had a lot of opinions that I agreed with, let's put it that way --

COMMISSIONER KIESLING: Thank you.

UNIDENTIFIED SPEAKER: -- to put it honestly, okay?

Wouldn't you think now with hindsight that absent clear statutory authority, that this being a new type of market condition, the Public Service Commission probably ought to have sought some guidance and some direction from the legislature?

COMMISSIONER KIESLING: Well, Senator --

UNIDENTIFIED SPEAKER: That's an unfair question but --

COMMISSIONER KIESLING: I'm willing to answer it, though.

Senator, as I indicated, we've had -- the Commission has been using uniform rates in this state for 20 years. The Jacksonville Suburban case has had uniform rates. That went up on appeal but it didn't go up on the uniform rate question.

UNIDENTIFIED SPEAKER: That's a consolidated system.

COMMISSIONER KIESLING: It went up on something else.

UNIDENTIFIED SPEAKER: Though, isn't it as far as the ownership? I mean didn't --

COMMISSIONER KIESLING: It's no different than Southern States. It has a number of small systems which it

(End of Tape 2 of 3. Tape 3 of 3 starts out in the middle of a different issue, but if you listen further on you will pick up Senate Bill 298 discussion once more.)

UNIDENTIFIED SPEAKER: (Discussion starts in the middle of a response.) So be it. But if we make a decision that unified ratemaking authority ought to be clarified, then we ought to go that way, too. I mean --

COMMISSIONER KIESLING: I agree.

UNIDENTIFIED SPEAKER: By the time the First DCA finishes with the case and then it gets -- this is the type of case where the Supreme Court might very well be inclined to accept jurisdiction on the basis of great statewide public interest and importance, it may be years before we know. Now, in the meantime -- this will be my last question to her, Mr. Chairman -- in the meantime, are these unified rates in effect and being charged now or not?

COMMISSIONER KIESLING: Yes.

UNIDENTIFIED SPEAKER: They are.

COMMISSIONER KIESLING: They are in place. They're being charged --

UNIDENTIFIED SPEAKER: So in your handout it's Alternate 1 statewide rates that are being charged in all of these systems.

COMMISSIONER KIESLING: It's not my handout.

UNIDENTIFIED SPEAKER: Oh, I beg your pardon.

COMMISSIONER KIESLING: So I have no idea what you're referring to.

UNIDENTIFIED SPEAKER: That's from Senator Brown-Waite.

COMMISSIONER KIESLING: I can tell you that, you know, in relationship to specific stand-alone rates --

UNIDENTIFIED SPEAKER: Well, this says $5 for the base --

COMMISSIONER KIESLING: Yes.

UNIDENTIFIED SPEAKER: -- facility charge in all of these systems and a gallonage charge of $1.19, which I assume --

COMMISSIONER KIESLING: It's up to $1.21 based on cost index pass throughs --

UNIDENTIFIED SPEAKER: All of these systems are paying that now?

COMMISSIONER KIESLING: Yes, sir. They are. Every residential customer.

UNIDENTIFIED SPEAKER: And there's no systems that are excluded from the -- there's no systems that have stand-alone rates?

COMMISSIONER KIESLING: Not were on the list and received notice.

UNIDENTIFIED SPEAKER: Are there any of the systems

owned and operated by Southern States that have stand-alone rates?

COMMISSIONER KIESLING: Yes, there are.

UNIDENTIFIED SPEAKER: How many?

COMMISSIONER KIESLING: I don't know that answer. I can tell you they are in the counties that we do not regulate in, and there are some, such as Marco Island, that were not included in this uniform rate because of the high cost. I've got John Williams here with me and I think can probably get that for you.

UNIDENTIFIED SPEAKER: So in other words, unified rates is the Commission policy where the Commission thinks it's a good policy, and is not their policy where they don't think it's a good policy.

COMMISSIONER KIESLING: That's right. It's one form of ratemaking that we view as part of our arsenal.

I would indicate in answer to -- I'm sorry.

UNIDENTIFIED SPEAKER: We've got some other folks that would like to testify, so we'll go on to the next person.

COMMISSIONER KIESLING: Could I at least provide, in response to the question that was asked earlier, what these rates would be when they are not stand-alone?

UNIDENTIFIED SPEAKER: Sure. If you'd be brief, please.

COMMISSIONER KIESLING: I'll be very brief.

UNIDENTIFIED SPEAKER: Thank you.

COMMISSIONER KIESLING: I can give you some examples, and let me indicate that under an EPA standard of affordable rates uses a $30,000 median income, a monthly water bill of $50 is considered affordable. And using the 10,000 gallons a month for SSU under the current uniform rates, the bill is $17.43. Additionally, SSU's monthly wastewater bills are $34.63. If we were to go to stand-alone rates, I can give you some examples at the 10,000 cap, Gospel Island and Citrus County stand-alone. Their monthly water bill just for water would be $155.85. For the Salt Springs system in Marion County the bill would be $117.59. For the wastewater bill at the cap of 6,000 gallons which we have in here, the Chuluota system --

UNIDENTIFIED SPEAKER: Thank you. Okay.

COMMISSIONER KIESLING: -- would be $192 a month.

UNIDENTIFIED SPEAKER: Thank you.

COMMISSIONER KIESLING: All right.

UNIDENTIFIED SPEAKER: I'm sorry to be compelled to ask this, but do I understand that you set rates based on the ability of the people to pay?

COMMISSIONER KIESLING: No, sir. But our charge is to ensure safe and reliable service at fair and reasonable rates, so when terms of rate --

UNIDENTIFIED SPEAKER: So why all the consideration

about what people earn in different areas? Is that part of your ratemaking consideration?

COMMISSIONER KIESLING: No. It is not. What was introduced at the investigative docket that was on a national basis it's viewed that 2% is affordable, and that was the information that was given to us.

UNIDENTIFIED SPEAKER: I think she's saying "yes but no." Thank you very much.

COMMISSIONER KIESLING: You have to consider whether the people can pay it.

UNIDENTIFIED SPEAKER: Thank you very much. James Desjardin.

MR. DESJARDIN: Good afternoon. My name is Jim Desjardin. I'm a consumer. I represent the Sugarmill Woods Civic Association, which has about 2,000 homes and 5800 people in Citrus County. We have been actively involved in rate cases of the PSC for 10, 12 years.

Of course, whether uniform rates are illegal or not as the statute is now written, we hope to hear as soon as all of the written and oral arguments have been completed in the court.

I can just tell you what the impact has been. Our rates have gone up from around $400 a years to $760, somewhere like that, with this. We are paying somewhere in the neighborhood of $300 a year subsidy over what our stand-alone

rates were. And who is receiving them? We have a reverse osmosis system that gets $916 a year for customer on water and 224 for sewer. We have an industrial park that receives $3840 a year subsidy in water. In the seven instances, the recipients of the subsidies receive more subsidy than their operating costs are, and so we're afraid uniform rates discounts two rather critical things: One is the up-front CIAC or up-front money we paid which can prepay for our system and make a better one. And the other one is the operating costs. So those two things have had a big impact.

There are other ways of doing it. The Public Service Commission Staff had something called cap stand-alone rates which again created a cash reserve to handle systems that had a critical problem either through EPA or something happened to their system, and what cap stand-alone rates, the impact on our rates would be 5 or 10% a year, and instead of close to 100%.

So there are other schemes that can be used to cover for the public good. I might say that Gospel Island is nearby where I live and that's eight customers, and their well had collapsed. So if you amortized the fixing of that over eight people, sure, they're going to pay $158 a month if you don't find some way of spreading that around.

So overall when we look at this, there were 86 water companies, and ten of them paid out the subsidies such as one

of ours, but it was 74% of the people. And there were 38 sewer companies and 11 of them paid out a subsidy such as ours, but that was 59% of the households. So it's a way of assessing people who are unfortunate enough to be Southern States utility customers and spreading it around.

In Citrus County where I live there are 70 some water companies and Souther States Utilities owns 11 and we're one of the 11.

UNIDENTIFIED SPEAKER: Yes, sir. Have you got a card in?

MR. TWOMEY: Yes, I do. Mike Twomey.

UNIDENTIFIED SPEAKER: Mr. Twomey come on up.

MR. TWOMEY: Thank you, Mr. Chairman. Senators, my name is Mike Twomey. I'm appearing on behalf of Spring Hill Civic Association, Inc. which is an association with approximately 1500 families in Hernando County, constituents of Senator Brown-Waite, who generally represent the interest of some 24,000 other families served by SSU, Southern States, in Hernando County.

Senator Hargrett (ph), you only got part of the story on what the problem is here. You asked about the right of counties to elect to govern their own water and sewer rates. And part of the problem here is that as Commissioner Kiesling told you, Hernando County bailed out, opted out after they got hit with these uniform rates they're talking about.

If you'll look at the first page of the handout -- this is my handout -- the first page you'll see why Hernando County opted out, which is their right under the statute. At the very top highlighted line on the sheet, first page, Spring Hill Utilities, their costs to provide service -- their own cost of service is an assisted revenue requirement column which shows that their cost of getting service, including all of the things Commissioner Kiesling told you about to include economies of scale, rate case expense and so forth is $3.749 million.

Now, what the PSC has done in order to achieve the ability to make other people's rates less, that is force these folks to pay subsidies to subsidize the rates for people whose rates would otherwise be larger, they tacked on $1.164 million and they made those people pay almost $5 million a year. Now the $1.164 million is subsidy pure and simple. It's not related to anything that the people in Spring Hill are going to receive in the terms of service.

Consequently, Hernando County decided they didn't want any part of this what amounts to regulatory socialism. They opted out, Senators. They opted out pursuant to Chapter 367 and decided to do it themselves.

Now, what Commissioner Kiesling only alluded to partially is that they, the PSC, are entertaining a proceeding now at the behest of Southern States to decide whether or not

they can force Hernando County back into PSC fold involuntarily and it doesn't just address the right of Hernando County to stay out. They are addressing up front the right of the power to bring back Hillsborough County, all Tampa folks, and take the right of the Hillsborough County Commission away and give it to the PSC so they can slap on these subsidies. Sarasota County and Polk County, for the rest of the senators it potentially affects the right of any county in this state to regulate -- adversely affects the right of any county to regulate their own utilities.

Now, Commissioner Kiesling said to you that this bill would prohibit uniform rates. The fact of the matter is if you read the bill SB 298, it doesn't even mention uniform rates. What it tries to stop is the subsidies in the sense that you can't let the PSC -- or the PSC can't charge any customer for expenses not incurred in providing them with service, nor can they give them rates that includes the return on investment where that property is not used and useful in providing them service. And as the Senator told you, because all of these systems are not interconnected, they are not connected by pipe. The investment, the plant investment in one system cannot constantly be used to serve another.

Now, she gave you examples of -- Commissioner Kiesling gave you examples of some 20 states where they have uniform rates. Our investigation showed that most of those

states, if not all of them, involved rates where there was no difference or a minimal difference in the cost of providing service. Ergo, there were no subsidies or only minimal, not undue discrimination in subsidies. That's not a problem here.

Now, the bottom line is that you're going to hear about conservation. As Mr. Desjardin told you, if you'll look on page -- if you'll look on Page 5 of 15 in the second part of your handout, and the numbers are in the upper right-hand column, and look at the center top system, Gospel Island Estates. What they've given you is a scare tactic that the PSC, the utility has used throughout. They've said to you these four people of Gospel Island will be paying in the neighborhood of $150 per month for a water and sewer system. It's not true because they have used a calculation based upon the consumption of 10,000 gallons of water. If you'll look at the page I just showed you, the people of Gospel Island in fact use under 5800 gallons per month, therefore, the rate they would pay under their own stand-alone rates would be dramatically smaller. The $150 is a scare tactic, it's dishonest, it's not true. You shouldn't be sucked in by this.

Very quickly, if you'll turn to the same exhibit, Page 13 of 15, it shows you one of the disparities that exist, Mr. Chairman.

The Sugarmill Woods people are in the lower right-hand corner, and the line that shows -- the third line

called net CIAC, money they pay up front when you buy a house you have to pay so much for a hook-up fee.

Mr. Desjardin's neighbors and himself paid a little over $1,000 for a hookup fee for water. They paid in excess of $2500 up front, it's like a down payment on your house -- up front for sewer, okay? They're losing that. Those down payments entitled them under Florida law to relatively low water and sewer rate. If you'll contrast that to South 40, which is an industrial park in the upper left-hand side, you have an industrial customer there that paid $15 down in their contributed property. A down payment of $15. They're getting the same rates by receiving subsidies at retired persons at Sugarmill Woods.

The question here is the law. Commissioner Kiesling said they had a second hearing. They did. It's true. More Commissioners heard this case than did the first time. What she didn't tell you is they refused to hear the legal issue. They refused to hear the legal issue. It's before the Court now.

This agency is a subordinate agency of the Senate and the Florida House. They are here to do what you tell them. What they did in this last case is contrary to the existing laws as we see it, as we know it. The purpose of this statute, the purpose of this bill is to make clear that they can't do it again.

I would urge your support of this bill to protect not only the people on that first page you see there, but everybody above the lower yellow line is being hurt. The same with the water. This thing can flip on those of you that have constituents whose systems might be purchased by SSU, so I would urge a favorable consideration of the bill. Thank you.

UNIDENTIFIED SPEAKER: Thank you. Any questions, gentlemen? Thank you very much.

MR. TWOMEY: Yes, sir. Senator Jennings.

SENATOR BROWN-WAITE: Mr. Chairman, we do have some additional speakers here. I believe I will TP the bill today. I will be bringing it back. I think we need to do some work on the bill. But as far as how far some of the other speakers have traveled --

UNIDENTIFIED SPEAKER: I don't have any --

SENATOR BROWN-WAITE: -- before we do TP the bill, I would like to hear Jack Shreve.

UNIDENTIFIED SPEAKER: That will be fine, Senator Brown-Waite. I was looking at the other cards I have, and there's nobody else that has traveled that isn't up here on a regular basis.

SENATOR BROWN-WAITE: Right. If we could, it was such short notice for the bill to be here -- the constituents in the counties we're not aware of it or I could assure you that they would have been here.

UNIDENTIFIED SPEAKER: And that -- yes, ma'am.

SENATOR DUDLEY: With the TP then, anticipating the bill would come back, that will give Mr. Shreve an opportunity -- he obviously wasn't anticipating testifying today or he would have filled out a card, and I'll be happy to defer to his testimony until the bill comes back.

UNIDENTIFIED SPEAKER: Why don't we do that, Senator Brown-Waite. Rather than doing it twice I think that would be more judicious use of the Members' time.

SENATOR BROWN-WAITE: Thank you.

UNIDENTIFIED SPEAKER: Thank you very much.

Senators, the last item -- without objection we're temporarily passing the bill.

End of Senate Bill 298 discussion.