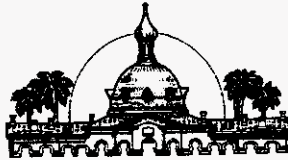


906
2

BOARD OF COUNTY COMMISSIONERS
HILLSBOROUGH COUNTY, FLORIDA

Office of the County Attorney

Emeline C. Acton, County Attorney
Ronald G. McCord, Chief Assistant
Donald R. Odom, Chief Assistant
Jennie Granahan Tarr, Chief Assistant
Guilene F. Theodore, Chief Assistant
John Dixon Wall, Chief Assistant
Joseph Egozcue, Administrator



County Center
601 E. Kennedy Blvd. -- 27th Floor
P.O. Box 1110
Tampa, Florida 33601
(813) 272-5670
Fax (813) 272-5231

September 26, 1995

ORIGINAL
FILE COPY

Blanca Bayo, Clerk
Florida Public Service Commission
101 East Gaines Street
Tallahassee, Florida 32399-0850

Re: Docket No. 950495-WS

Dear Ms. Bayo:

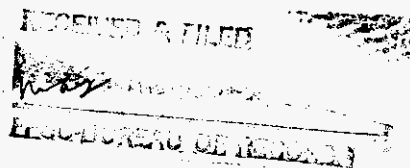
Please find enclosed Hillsborough County's Petition for Formal Administrative Hearing. Please accept same for filing in the official records with the Clerk of the Florida Public Service Commission.

Thank you for your assistance in this matter.

Sincerely,

Donald R. Odom
Chief Assistant County Attorney

- ACK
- AFA 3 DRO/ch
- APP _____ Enclosure(s)
- CAF _____ All parties of record
- CM _____
- CL _____
- EA _____
- LES 1
- LR 5
- OC _____
- PH _____
- SEC _____
- WAS 1 *Wallas*
- OTH _____



DOCUMENT NUMBER-DATE

An Affirmative Action/Equal Opportunity Employer

09562 SEP 27 95

FPSC-RECORDS/REPORTING

LT1644we\ch
CAO #89-2042-4

NO COPIES RECEIVED

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

HILLSBOROUGH COUNTY, Petitioner

vs.

Docket No. 950495-WS

FLORIDA PUBLIC SERVICE COMMISSION,
Respondent

**HILLSBOROUGH COUNTY'S PETITION FOR
FORMAL ADMINISTRATIVE HEARING**

Pursuant to Section 120.57, *Florida Statutes* and *Florida Administrative Code, Rule 25-22.029*, Hillsborough County through its undersigned attorney files this *Petition for Formal Administrative Hearing*.

In support of its Petition, Hillsborough County states as follows:

1. Hillsborough County is a party to the proceeding titled, "*In re: Investigation Into Florida Public Service Commission Jurisdiction over Southern States Utilities, Inc. in Florida*", Docket No. 930945-WS.

2. Hillsborough County is a customer of SSU by virtue of the fact that SSU provides service to a Hillsborough County Parks and Recreation facility and a Hillsborough County Community Health & Human Services facility.

3. On June 20, 1995 the Florida Public Service Commission

DOCUMENT NUMBER-DATE

09562 SEP 27 1995

PL1621WK/89-2042-10\ch

896

(PSC) voted that the PSC had jurisdiction over Southern States Utilities, Inc. (SSU) facilities and land throughout the State of Florida.

4. Hillsborough County timely filed a Notice of Appeal in the First District Court of Appeal to appeal the PSC's Order in PSC Docket No. 930945-WS. The counties of Hernando, Polk, Collier and Sarasota have also filed timely Notices of Appeal.

5. As a result of the pending appeals, the PSC's Order finding that it has jurisdiction over SSU's systems statewide is not final. General Hospital Corporation v. Tel Service Co., Inc., 212 So2d 369 (Fla. 2nd DCA 1968).

6. Hillsborough County is not subject to the jurisdiction of the PSC until the First District Court of Appeal has ruled on the pending appeals and the time for filing further appeals has expired. General Hospital Corporation v. Tel Service Co., Inc., Id.

7. Pursuant to Section 367.171, *Florida Statutes*, SSU facilities and land located in Hillsborough County are not subject to the jurisdiction of the PSC.

8. On June 28, 1995, SSU filed an application for uniform increased water and wastewater rates which did not include Hillsborough, Polk and Hernando Counties. PSC Docket No. 95-0495-WS

9. The PSC staff found that SSU's filing was deficient because it did not include proposed rates for Hillsborough, Polk and Hernando Counties.

10. The PSC considered the issue of the deficiency of SSU's filing as an agenda item on its August 1, 1995 Agenda.

11. On August 1, 1995 the PSC ruled that SSU's filing was deficient because it did not include proposed rates for Hillsborough, Polk and Hernando Counties.

12. Hillsborough County's substantial interests were determined at the August 1, 1995 Agenda Conference.

13. Hillsborough County did not receive written notice of the Agenda Conference nor did the Commission publish notice of its proposed agency action prior to determining Hillsborough County's substantial interest.

14. As a party whose substantial interests were determined by the PSC at its August 1, 1995 Agenda Conference, Hillsborough County was entitled to a Notice of Proposed Agency Action and a formal Administrative Hearing. McDonald v. Dept. of Banking, 346 So.2d 569 at 578 (Fla. 1st DCA 1977).

15. The inclusion of Hillsborough County in the Uniform Rate Case, PSC Docket No. 950495-WS, will result in injury in fact to Hillsborough County which has sufficient immediacy to justify a

hearing. Fairbanks, Inc. v. Department of Transportation, 635 So.2d 58 (Fla. 1st DCA 1994)

16. Hillsborough County's substantial interests were affected by the PSC's decision since the PSC's decision will require Hillsborough County to expend considerable time, effort and resources including the retention of rate case consultants and specialized legal representation to participate in the rate proceeding.

17. In the event the First District Court of Appeal overturns the PSC's Order establishing the PSC's jurisdiction over SSU's facilities and land located in Florida, those funds expended by Hillsborough County and/or any other customers of SSU in Hillsborough County will have been expended prematurely and without benefit to Hillsborough County or any other customers of SSU in Hillsborough County. Furthermore, Hillsborough County has no remedies with which to recover said funds.

18. The disputed issues of material fact and law in this proceeding are as follows:

- 1) Whether the decision to include Hillsborough County in Uniform Rate Case Docket No. 950495-WS was arbitrarily and capriciously determined and, therefore unreasonable;
- 2) Whether the act of the PSC to proceed with the Agenda Conference Item determining whether to require that Hillsborough County be included in the Uniform Rate Case without providing notice to Hillsborough County and other interested counties was arbitrarily and capriciously determined and, therefore unreasonable.

Florida Sugar Cane League v. South Florida Water Management District, 617 So.2d 1065 (Fla. 4th DCA

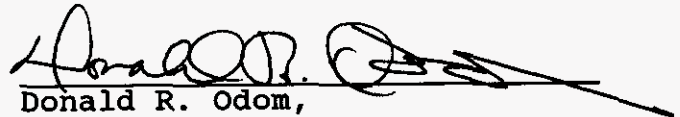
1993)

WHEREFORE, Hillsborough County respectively requests

- (1) that the PSC grant Hillsborough County a Formal Administrative Hearing in this cause, pursuant to Section 120.57(1), *Florida Statutes*;

- (2) that the PSC order that Hillsborough County be deleted as one of the counties in the pending Uniform Rate Case.

Respectfully submitted,



Donald R. Odom,
Chief Assistant County Attorney
Hillsborough County, Florida
Post Office Box 1110
Tampa, Florida 33601
(813) 272-5670
Fla. Bar No. 239496

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and accurate copy of the foregoing has been furnished by U.S. Mail this 26th day of September, 1995 to the following persons:

Ken Hoffman, Esquire
Rutledge, Ecenia, Underwood
Purnell & Hoffman, P.A.
Post Office Box 551
Tallahassee, Florida 32302-0551

Robert J. Pierson, Esquire
Maragaret E. O'Sullivan, Esquire
Charles J. Pellegrini, Esquire
Prentice P. Pruitt, Esquire
The Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, Florida 32399-0850

Brian Armstrong, Esquire
Southern States Utilities
General Offices
1000 Color Place
Apopka, Florida 32703

Timothy F. Campbell, Esquire
Office of the County Attorney
Polk County
Post Office Box 60
Bartow, Florida 33830

R. Bruce Snow, Esquire
County Attorney
Hernando County
112 N. Orange Avenue
Brooksville, Florida 34601

Michael B. Twomey, Esquire
Route 28, Box 1264
Tallahassee, Florida 32310

Kathleen Schneider, Esquire
Sarasota County Attorney's Office
1549 Ringling Blvd.
3rd Floor
Sarasota, Florida 34236

Alan C. Sundberg, Esquire
Robert W. Pass, Esquire
Carlton, Fields, Ward, Emmanuel, Smith & Cutler
215 South Monroe Street
Tallahassee, Florida 32301

Thomas C. Palmer, Esquire
Collier County Attorney's Office
3301 E. Tamiami Trail
Building F - 8th Floor
Naples, Florida


Donald R. Odom,
Chief Assistant County Attorney