

ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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, Highlands, Lake, Lee, Marion, Martin, Nassau, Orange, Osceola, Pasco, Putnam, Seminole, St. Johns, St. Lucie, Volusia, and Washington counties.

DOCKET NO. 950495-WS
FILED: FEBRUARY 5, 1999

RECEIVED FPSC
99 FEB - 5 PM 4:48
RECORDS AND REPORTING

PETITION FOR FORMAL HEARING BY
SUGARMILL WOODS CIVIC ASSOCIATION, INC.

Petitioner, Sugarmill Woods Civic Association, Inc. ("Sugarmill Woods") by and through its undersigned counsel, pursuant to the provisions of Order Nos. PSC-99-0093-FOF-WS and PSC-99-0093A-FOF-WS; Rule 28-106.201, Florida Administrative Code; Chapter 120 and Chapter 367, Florida Statutes, petitions the Florida Public Service Commission (Commission) as follows:

1. This Petition is intended to conform with the provisions of Rule 28-106.201(2), F. A. C., the provisions of which are set forth in italics below:

(a) *The name and address of each agency affected and each agency's file or identification number, if known;*

2. The agency affected is the Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850. The Agency's docket number is Docket No. 950495-WS;

ACK _____
AFA 3
APP _____
CAF _____
CMU _____
CTR _____
EAG _____
LEG 2
LIN 5
DPC _____
RCH _____
SEC 1
WAS Willis
DTH _____

RECEIVED & FILED

FPSC-BUREAU OF RECORDS

DOCUMENT NUMBER-DATE
01569 FEB-5 99
FPSC-RECORDS/REPORTING

(b) The name, address, and telephone number of the petitioner; the name, address, and telephone number of the petitioner's representative, if any, which shall be the address for service purposes during the course of the proceeding; and an explanation of how the petitioner's substantial interests will be affected by the agency determination;

3. Petitioner: Sugarmill Woods Civic Assoc.
Ronald Broadbent, President
6 Byrsonima Loop West
Homosassa, FL 34446
Phone: 352-382-2066

Michael B. Twomey
Post Office Box 5256
Tallahassee, Florida 3231-5256
850-421-9530

The Petitioner's affected substantial interests and its right to a hearing on the issue were specifically recognized by this Commission at Page 21 of the order under consideration when it said:

The surcharge methodology to be used was not at issue at hearing and was not brought for review to the Court. We are taking action on this issue now for the first time in this docket. Because our decision on which surcharge option to require the utility to implement will affect the specific amount due from the customers, it will necessarily affect the substantial interests of the customers. Therefore, our decision on which methodology shall be used to calculate the surcharge in this case shall be issued as proposed agency action.

and on Page 29 wherein it was stated:

ORDERED that the provisions of this Order authorizing the collection of surcharges is issued as proposed agency action and shall become final and effective unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings or Judicial Review" attached hereto. It is further

ORDERED that if protested, the issue of what action should be taken with regard to the collection of surcharges shall be made an issue in the scheduled remand hearing.

The Petitioner's substantial interests are affected because it is unlawfully and unconstitutionally deprived of its property through the Proposed Agency Action contained in Order No. PSC-99-0093-FOF-WS, which order proposes to approve surcharges for collection by Southern States Utilities, Inc. ("SSU") that are based on a uniform rate structure. The utilization of a uniform rate structure to collect surcharge revenues owing to SSU is in clear conflict and direct opposition to the First District Court of Appeal's decision remanding the case to the Commission in Southern States Utils., Inc. v. FPSC, 714 So. 2d (Fla. 1st DCA 1998) and is based upon either a clear misunderstanding or misstatement of the facts.

In its remand opinion the Court minimally approved the Commission's earlier use of the so-called capband rate structure. It met Petitioner's complaints of undue discrimination and an unlawful taking with the observation that this rate structure did

not cause any customers to pay more than 7 percent subsidies to customers in other systems. The Court did not state in its opinion that the capband rate structure would be judicially approved irrespective of the level of subsidies that were compelled from system to system and it certainly did not approve the use of the so-called "uniform" rate structure, which methodology simply averages the revenue requirements of all systems and charges the customers of all systems equal or uniform rates with complete and total disregard for the costs of providing service at each system and which has no consideration at all for the level of subsidies that are compelled from system to system.

(C) A statement of when and how the petitioner received notice of the agency decision;

4. Petitioner received notice of the proposed agency decision by receipt of a copy of Order No. PSC-99-0063-FOF-WS;

(d) A statement of all disputed issues of material fact. If there are none, the petition must so indicate;

5. Petitioner disputes the following issue of material fact which the Proposed Agency Action purportedly resolves adversely to Petitioner and upon which the approved surcharge methodology was selected:

a. At Page 25, the Commission when referring to the uniform rate structure method approved for collecting surcharges states:

1

The methodology which we hereby approve is a variation of the base facility surcharge methodology. This variation is used to calculate one base facility surcharge to be applied across the board to all systems. This base facility surcharge is then applied, by meter size, to affected customers for the period they were utility customers. In this way, the surcharges will be apportioned in such a manner that each affected customer will be held responsible for his or her pro-rata share. One benefit of this is that it is also easy and straightforward. However, this also ignores the rate structure and will apply evenly to all affected customers, including capped systems.

(Emphasis supplied). The suggestion, if it is intended as a statement of fact, that under the surcharge methodology "each affected customer will be held responsible for his or her pro-rata share" is not only factually false, it is a willful and knowing misstatement of the facts contained in the record of this proceeding and is specifically objected to by the Petitioners.

While Petitioners will provide greater proofs on this issue during the remand hearing, every participant to this proceeding, including the parties, Commission Staff and Commissioners, is aware that the surcharge revenues owing to SSU as a result of the so-called "non-discretionary" remand issues from the Court were the result of several distinct factual reversals by the Court. These issues, which will not and cannot be reconsidered by the Commission on remand, involved: (1) reuse issue; (2) admitted errors in used and useful calculations; and (3) equity adjustments. Of the three, only the equity adjustment had any revenue implication on the Sugarmill Woods water and wastewater

systems. That these equity adjustments, which Sugarmill Woods concedes it must be responsible for under the Court's decision, only minimally affect the rates of Sugarmill Woods when the Commission faithfully uses the Court-approved capband rate structure is demonstrated by the prospective rate increases the Commission has approved for SSU. These increases only make each systems' customers pay for the errors specifically applicable to their systems and are applied through the capband rate structure approved by the Court, albeit with the caveat regarding the 7 percent subsidy level. For example, as shown on Page 38, Water Schedule 3 of the Order, Sugarmill Woods water rates for 10,000 gallons consumption only increase from \$15.10 to \$15.23 or \$.13, which is less than one percent. Likewise, its wastewater rates for 6,000 gallons usage only go up from \$21.44 to \$22.03, which is \$.59, or a little more than a 2 percent increase. These are the comparative amounts or percentages that Sugarmill Woods customers should have been required to pay as surcharges for the approximately 27 months that they were being undercharged as a result of the equity adjustment errors. Again, only the equity adjustment was used to increase Sugarmill Woods customers rates on a prospective basis since it has no wastewater reuse facilities to be impacted by the Court's reversal of that issue and, further, because its facilities and neither its stand-alone or capband revenue requirement were impacted by the admitted

errors in used and useful calculations. It can truthfully be stated - conceding the correctness of the capband rate structure - that the prospective rate increases require each customer to pay their pro rata share.

Whereas the Commission abided by the approved capband rate structure in setting prospective rates, it ignored the same in calculating the retroactive surcharges, choosing instead to adopt straight, uniform rates. Aside from ignoring the approved capband for no sensible reason, the Commission greatly exceeded the 7 percent subsidy limitation imposed on the capband rate structure by the Court. For example, as shown on Page 42 of the Order, Sugarmill Woods' change in revenue requirement due to remand errors and admissions would be \$5,655 for water service and result in a monthly BFC surcharge per ERC of \$.08. If Sugarmill Woods were to grudgingly except the appropriateness of the capband rate structure, the \$.08 surcharge would approximate it fair share on a pro-rata basis. However, under the uniform rate methodology proposed by the Commission, the water BFC surcharge per ERC jumps fully fifty percent to \$.12. As shown on Page 43, the wastewater surcharge jumps from \$.43 to \$1.53 or over a three fold increase.

Quite simply, Sugarmill Woods refutes any finding that the approved surcharges represent pro rata fair shares as being not

only factually incorrect but dishonest and demands a hearing on the same.

(e) A concise statement of the ultimate facts alleged, including the specific facts the petitioner contends warrant reversal or modification of the agency's proposed action;

6. Surcharges must be based only on the revenue impact of the Court's reversals that directly impacted the stand-alone revenue requirement of each water and wastewater system or, at most, the rate impact of a given system's stand-alone rate increase from a reversal item as flowed through the capband rate structure utilizing the same methodology approved by the Court.

(f) A statement of the specific rules or statutes the petitioner contends require reversal or modification of the agency's proposed action;

7. Section 367.081, Florida Statutes, requires this Commission to establish rates which are based upon the costs of providing service and upon the quality and value of the service. The surcharges approved by the Commission in the instant case are not based upon the cost of providing service, are unduly discriminatory, and are, thus, not fair and reasonable. Furthermore, the surcharges are not consistent with the fairness requirements set out by the Florida Supreme Court in GTE Florida v. Clark, 668 So. 2d 971 (Fla. 1996).

(g) A statement of the relief sought by the petitioner, stating precisely the action petitioner wishes the agency to take with respect to the agency's proposed action.

8. Petitioner demands that the Commission withdraw approval of the proposed surcharges and approve surcharges that are based solely upon either Sugarmill Woods' stand-alone revenue increase as a result only of the equity adjustments compelled by the Court's reversal, or surcharges based upon the stand-alone revenue increases flowing from the equity adjustment and incorporated in the Court-approved capband rate structure.

WHEREFORE, Petitioner Sugarmill Woods demands the relief identified in the body of this petition, relies upon the allegations as set forth therein, demands a formal hearing under Sections 120.569 and 120.57(1) F. S., and petitions for such other relief as may be appropriate in the premises.

Respectfully Submitted



Michael B. Twomey
Post Office Box 5256
Tallahassee, Florida 32314-5256

850-421-9530

Attorney for Sugarmill Woods
Civic Association

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and accurate copy of the foregoing was furnished by U.S.

Mail on the 5th day of February, 1999 to the following persons:

Brian Armstrong, Esquire
General Counsel
Southern States Utilities, Inc.
1000 Color Place
Apopka, Florida 32703

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

Lila A. Jaber, Esquire
Division of Legal Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0862

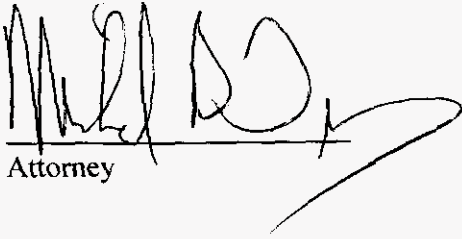
Charlie Beck, Esquire
Harold McLean, Esquire
Associate Public Counsel
Office of the Public Counsel
c/o The Florida Legislature
111 West Madison Street, Suite 812
Tallahassee, Florida 32399-1400

Arthur Jacobs, Esquire
P.O. Box 1110
Fernandina Beach, FL 32035-1110

Darol H.M. Carr, Esquire
P.O. Box 2159
Port Charlotte, FL 33949

McWhirter Law Firm
McGlothlin/Kaufman
117 S. Gadsden St.
Tallahassee, FL 32301

John R. Jenkins, Esquire
Rose Sundstrom & Bentley, LLP
2548 Blirstone Pines Dr.
Tallahassee, FL 32301
Frederick Kramer, Esquire
950 N. Collier Blvd., #201
Marco Island, FL 34145
Charles G. Stephens, Esquire
1400 Prudential Dr.
Suite 4
Jacksonville, FL 32207



Attorney