BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for transfer of assets from Silver Lake Properties, Inc. to Southern States Utilities, Inc. and Amendment of Certificates Nos. 76-W and 284-S in Putnam County	DOCKET NO. 891187-WS ORDER NO. 23704 ISSUED: 10-31-90

The following Commissioners participated in the disposition of this matter:

MICHAEL McK. WILSON, CHAIRMAN
THOMAS M. BEARD
BETTY EASLEY
GERALD L. GUNTER
FRANK S. MESSERSMITH

ORDER ASSESSING FINE FOR CHARGING UNAUTHORIZED RATES

BY THE COMMISSION:

This case came before the Commission at the July 31, 1990 agenda conference for approval of a transfer and amendment of certificate. On August 23, 1990, in Order No. 23397, we approved the transfer and ordered Southern States Utilities, Inc. (SSUI) to show cause why it should not be assessed a fine of $1,000.00 for violation of Section 367.081, Florida Statutes, and Rule 25-9.044, Florida Administrative Code, by charging unauthorized rates. SSUI filed a timely response to the order to show cause.

SSUI purchased the Silver Lake Oaks system, which was previously exempt from Commission jurisdiction under Section 367.022(5), Florida Statutes. Silver Lake Oaks had provided service without specific compensation for the service, that is, utility services were included in rents so no specific rates were being charged. A few days before the sale of the utility the previous owner notified customers he would be implementing rates and they would be billed in arrears beginning January 15, 1990. The rates that would be charged would parallel SSUI's approved rates for Putnam County. SSUI was the sole beneficiary of this unauthorized rate implementation.

Section 367.161(1), Florida Statutes, authorizes this Commission to impose fines if a utility "knowingly refuses to comply with, or willfully violates, any provision of this chapter or any lawful rule . . . of the Commission . . . ." We find that

SSUI's response to the order to show cause fails to demonstrate that SSUI should not be fined for violating the statute and rule. A paragraph by paragraph discussion of SSUI's response follows.

In paragraph 3 of its response, SSUI stated it believed the system was exempt from Commission regulation under the previous owner. This statement is correct, but it does not relieve SSUI from complying with the requirements of Section 367.081, Florida Statutes, and Rule 25-9.044, Florida Administrative Code.

In paragraph 4 of its response, SSUI stated "[t]here is no clearly applicable law as to the proper procedure to pursue in obtaining Commission approval of previously unregulated systems providing service without existing service rates and charges." Section 367.081(1) states, however, that "a utility may only charge rates and charges that have been approved by the commission." Rule 25-9.044(1), Florida Administrative Code, provides in the case of change of ownership of a utility that the new owner must charge the rates of the former operating company "unless authorized to change by the Commission." In addition, Rule 25-9.001(3), Florida Administrative Code, relating to tariffs provides that "[n]o rules and regulations, or schedules of rates and charges, or modifications or revisions of the same, shall be effective until filed with and approved by the Commission as provided by law." Rule 25-30.135 reiterates this provision for water and sewer utilities.

In paragraph 5 of its response, SSUI alluded to consultations with Commission personnel. SSUI said "[t]he announcement of rates by the prior owner prior to the acquisition was made in good faith, pursuant to the Applicant's understanding of the suggestions of such Commission personnel." This portion of SSUI's response has some bearing on the question whether SSUI's actions can be deemed knowing and willful, however, SSUI's allegation is vague, as was SSUI's allusion to such consultations at the July 31, 1990, agenda conference. SSUI has waived hearing on the fine issue.

In paragraph 6 of its response, SSUI alluded to the significant regulatory lag in obtaining Commission "review of acquisitions and proposed rates where none have been previously established." SSUI noted that nearly ten months passed from the time this application was filed until the proposed agency action (PAA) was issued in this case. SSUI argued it is not reasonable to

expect them to operate the utility without compensation for so long.

While regulatory lag is a problem, SSUI contributed to the delay by having sent incorrect notices and having to republish them. In addition, SSUI requested that the case be deferred to a later agenda conference in order to be present to discuss the proposed show cause order. Further, this problem does not relieve SSUI of its obligation to comply with Section 367.081, Florida Statutes, and Rule 25-9.044, Florida Administrative Code.

In paragraph 7 of its response, SSUI noted that the rates implemented were ultimately determined to be reasonable. This statement is correct, however, it does not relieve SSUI of the obligation to comply with Section 367.081, Florida Statutes and Rule 25-9.044, Florida Administrative Code.

In paragraph 8 of its response, SSUI stated that the rates were not actually implemented until nearly three months after the application was filed and that the Commission was so informed in the customer notice part of the application and did not indicate to SSUI that this was improper. As far as notice to Commission staff is concerned, we note that the file in this docket contains conflicting information. The initial application contains a copy of an undated (and apparently not sent) letter from the previous owner informing the customers of the new rates and that they would be billed in arrears beginning November 1, 1989. On October 25, 1989, SSUI sent the Commission a copy of a corrected customer letter which informed customers they would be billed in arrears beginning January 15, 1990. In a letter to staff dated December 5, 1989, SSUI stated:

> The rates and charges implemented as stated in the Notice to Customers dated October 13, 1989, were charged pursuant to Mr. Cutt's authority as owner of the system. Pursuant to the original tariff sheets for water and sewer rates found in Exhibit Q of the Application, the rates were authorized on September 27, 1989, and effective as of October 13, 1989.

The information provided to Commission staff was confusing at best and the provision of that information does not relieve SSUI of the obligation to comply with the statute and rule.

In paragraph 9 of the response, SSUI stated there is a basis for finding it did not knowingly refuse to comply with or willfully violate Chapter 367 or the Commission rules. We find that the opposite is true, however. In the order to show cause, we stated:

> SSUI, as owner and operator of over 140 systems within the State of Florida, many of which are under this Commission's jurisdiction, is fully aware of the regulatory process and is aware that rates and charges must be approved by this Commission prior to implementation. SSUI has accepted no responsibility for the action although it is the sole beneficiary of the unauthorized rate implementation.

SSUI did not deny this statement in its response.

In paragraph 10 of its response, SSUI asks the Commission to decline to assess a penalty because this case is virtually identical to the circumstances involved in Orders Nos. 22195, 22968, and 23024, and in those cases no fines were assessed. While the cases resulting in these orders were similar to the instant case in many respects, each case is distinguishable from the present case.

Those orders were issued in three cases involving petitions for transfer filed on November 20, 1989. In the Samira Villas (Docket No. 891318-WU, Order No. 22968 issued May 22, 1990) and Gospel Island Estates (Docket No. 891321-WU, Order No. 23024 issued June 4, 1990) orders, this Commission discussed whether a show cause order would be issued to address SSUI's failure to timely file an application for transfer. Although those dockets did involve previously exempt utilities, the issue of having charged unauthorized rates was not addressed in either order. Ultimately the Commission decided not to impose fines for unauthorized transfers in those cases because SSUI had filed the petitions for transfer within one or two months of having been notified to do after having been given 90 days to do so.

In the Lakeview Villas (Docket No. 891317-WS, Order No. 22915, issued May 5, 1990) order, the Commission addressed both the untimely filing of the transfer application and the charging of unauthorized rates in violation of Rule 25-9.044, Florida Administrative Code. That docket also involved a previously exempt system. The previous owner of Lakeview Villas had charged a flat

quarterly fee of $15. SSUI changed that to a bimonthly $5 fee plus $0.71 per 1,000 gallons. The Commission decided not to issue a show cause order as to either of the violations, however, because "[a]lthough SSUI changed the rates charged by the previous owner without the approval of this Commission, the rates charged by SSUI produce essentially the same revenue as did the rate charged prior to the transfer." In the instant case, the previous owner charged no rates and SSUI implemented its authorized rates for Putnam County. Thus, each of the cases SSUI refers to in paragraph 10 is distinguishable from the present case.

In conclusion, we find that SSUI should be fined $1,000.00 for violating Section 367.081, Florida Statutes, and Rule 25-9.044, Florida Administrative Code. We find that a period of thirty days within which to pay the fine is reasonable. Once the fine has been paid, this docket will be closed.

In consideration of the foregoing, it is

ORDERED by the Florida Public Service Commission that Southern States Utilities, Inc. is hereby assessed a fine of $1,000.00 for violation of Section 367.081, Florida Statutes, and Rule 25-9.044, Florida Administrative Code. It is further

ORDERED that Southern States Utilities, Inc. shall pay the fine within 30 days of the date of this order. It is further

ORDERED that when SSUI pays the fine this docket shall be closed.

By ORDER of the Florida Public Service Commission this 31st day of OCTOBER, 1990.

STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)
MJL

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water or sewer utility by filing a notice of appeal with the Director, Division of Records and Reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900 (a), Florida Rules of Appellate Procedure.