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January 16, 1996

ORIGINAL
FILE COPY

Blanca S. Bayo
Director
Division of Records & Reporting
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, Florida 32399-1400

Re: Docket Nos. 920199-WS, 930880-WS and 950495-WS and Ex Parte
Communication from Lt. Gov. Buddy MacKay

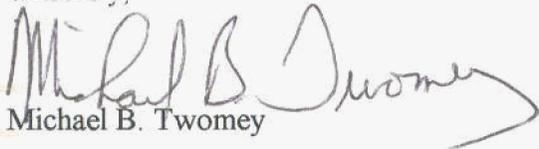
Dear Ms. Bayo:

The attached letter to the Lt. Gov. is my response to his ex parte communication to the Commissioners "inquiring" about Southern States Utilities, Inc. Please place it in the files of these dockets.

I am not immediately going to serve the other parties of these dockets with this response. Should I? What is the Commission's practice with respect to serving parties and other interested persons on a docket's mailing list with these type communications? I will give you a call later to ask.

Thank you for your assistance.

Sincerely,


Michael B. Twomey

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January 3, 1996

The Honorable Buddy MacKay
Lieutenant Governor, State of Florida
The Capitol
Tallahassee, Florida 32399-0001

Dear Lieutenant Governor MacKay:

I am an attorney representing five civic associations and over 45,000 households in four active dockets involving Southern States Utilities, Inc. ("SSU") at the Florida Public Service Commission ("PSC"). Yesterday I received a copy of your December 21, 1995 letter to Susan Clark, Chairman of the PSC, stating that you had recent discussions with SSU's President, and that you had received a copy of a letter to Governor Chiles from the CEO of SSU's parent corporation, Minnesota-based Minnesota Power, now a member of the Florida Council of 100, complaining about the economic impact of PSC decisions on SSU. You stated to Clark that you "would be very concerned if we were to place in serious financial jeopardy a unique private water utility" that you believe plays a valuable role "by purchasing and upgrading small, often rural, failed water and wastewater systems" and requested information from the PSC addressing the concerns outlined by Minnesota Power CEO Sandbulte in his sniveling and grossly misleading four-page letter, which you forwarded to Clark.

Although the PSC is a subordinate agency of the legislature, Governor Chiles has appointed or reappointed all five commissioners. If you should succeed the Governor, you will be in the position of reappointing these individuals or axing them if you find them wanting for any reason. I am convinced that you are well-intended in your purpose, but that you have been misled by Minnesota Power, SSU and their lobbyists with close ties to the Executive Office. Irrespective of your motive, I find your communication to Commissioner Clark to be an unprecedented, unwarranted and outrageous intrusion in the administrative hearing process of this state. That it has been timed to improperly pressure the PSC at a critical juncture in several cases before them makes your communication even more objectionable. That Secretary Dusseau of the Florida Department of Commerce has also weighed in lobbying for SSU with impermissible ex parte communications to the PSC makes this entire matter even more questionable. I intend to counter every Arend Sandbulte misstatement to the Governor within the next several days and will copy you. However, let me briefly tell you why I find your actions so objectionable.

That Florida has "failed water systems" at all is largely due to incompetent developers aided by the complicity of government in luring homeowners to Florida. The PSC has for decades allowed

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developers to deceive home purchasers by luring them with exceedingly low, non-compensatory water and sewer rates. The low rates last only until the last lot is sold and then rates are allowed to go through the roof. Additionally, the PSC has historically been negligent in fulfilling its statutory responsibility for setting "fair and reasonable" service availability or CIAC charges. As a consequence, Florida's privately owned water and sewer systems run the gamut from being horribly over-capitalized to having no owner investment, neither of which is acceptable from a regulatory perspective. Regulators, either at the PSC or county level, have also consistently failed to ensure that systems were adequately maintained. The result, admittedly, has been the abandonment of some "trashy" systems. Unfortunately, to date, the PSC and SSU have considered that virtually anyone with a water faucet or central sewer service was fair game for financing the clean-up of these systems. With no perceptible awareness of the constitutional or statutory underpinnings of utility regulation in this country, they have willy-nilly assumed they could dip into the wallets of my clients to correct their own failings and those of vanishing developers. They are wrong. You are wrong, too, if you believe the contents of your letter and the Sandbulte letter. Worse still, you have compounded your error by interfering in pending administrative cases that are supposed to be free of such interference. You have sided with a "carpetbag" Minnesota power company by clearly suggesting that the PSC has harmed SSU by not raising my clients' rates even more than the unconscionable levels already experienced. Lastly, you have interfered on the eve of two critical decisions facing the PSC. Let me give you a few more specifics.

Utility rates are supposed to be based on the "cost of service" to the customers being charged the rates. SSU is a conglomeration of over 150 water and sewer systems spread over the state. The vast majority are not physically interconnected by pipe and, therefore, cannot provide utility service to one another. Most systems were previously owned by others and were only recently acquired by SSU. Some systems were well-maintained and reasonably capitalized, while others were not. My clients in Sugarmill Woods, for example, paid in about \$2,300 per customer in service availability charges or CIAC, which amount is deducted from the utility rate base and, therefore, legally entitles them to lower rates. The PSC did many objectionable things when it imposed the so-called "uniform rates" for SSU in 1993, including failing to properly notice the customers, failing to have competent evidence to support its findings of fact, and failing to follow the law. By ordering uniform or identical rates without any regard for cost of service or CIAC levels, the PSC essentially "stole" the CIAC of my clients and transferred it to others. Widows and other of my retired clients living on fixed incomes in Sugarmill Woods were forced to pay subsidies of \$300 a year to support the \$4,000 a year rate subsidies received by industrial and commercial customers at SSU's South Forty system. Likewise, clients of mine living in \$45,000 homes were forced to subsidize the utility rates of people living in \$250,000 homes served by other SSU systems. In all, forced subsidies exceeded \$4 million annually as a result of the 1993 case.

The uniform rates charged by SSU were a straight mathematical average that didn't consider either the "ability to pay" when compelling the payment of subsidies or the "need" for subsidies

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when dispensing them. Importantly, to anyone that understands regulatory law and the constitutions, "ability to pay" and "need" are not factors that can constitutionally be considered. Likewise, while you may think SSU buying trashy systems has value to the state, neither you, the PSC, nor the legislature can do it with my clients' utility rates. Do it with General Revenue if you think it is so important and if you can justify bailing out incompetent developers and regulators to the electorate. Doing it through uniform rates is not a constitutional option. Uniform rates are "regulatory socialism" pure and simple and I don't think you want to tie your political star to them.

After a two-year David and Goliath fight against both the PSC and SSU, my clients and I, at great expense to them, succeeded in having the uniform rate decision reversed at the First District Court of Appeal and then pushed a foot-dragging PSC into ordering stand-alone rates and almost \$9 million in refunds to the overcharged customers. Sandbulte and his crew could have chosen to recover almost exactly the same revenues without any risk of refund liability to his shareholders in 1993, but arrogantly choose to gamble by abusing my clients. During the pendency of our appeal, Sandbulte failed to make his shareholders aware of the refund contingent liability and is now faced with making refunds at a time when he desperately needs cash to pay dividends. He has come to you and the Governor for help. You should ignore him and concentrate on the needs of your constituents. In any event, you should stay out of the administrative law process unless you clearly and publicly officially intervene on SSU's side in these matters.

Despite Sandbulte's assertions to the contrary, the PSC had no choice but to order the rate changes and refunds in the face of our victory in the courts. The subsequent PSC decision Sandbulte places so much faith in is also on appeal. It is every bit as shoddy as the PSC's first order and I am confident it, too, will be reversed. Sandbulte's statements to the Governor about the widespread acceptance of uniform rates elsewhere are grossly misleading, if not intentionally dishonest. I don't have time to debunk every misleading statement at the moment, but Sandbulte's statements are materially false. The PSC did what was required of it by the First District and, in the process, potentially saved Sandbulte from squandering more of his shareholders' dividends. He should be grateful.

Uniform rates, as now charged by SSU are illegal. Furthermore, they are unconstitutional and cannot be revived by revising the statutes. Ask a competent constitutional attorney and try to avoid a second out-of-state automobile registration type fiasco. I doubt that Sandbulte or Jeff Sharkey informed you of this, but they have talked you into taking the side of this utility in opposition to the overwhelming majority of SSU's customers, who are already outraged at the non-stop rate increases they have experienced at the hands of the PSC and SSU. Your inappropriate intervention here is an ill-conceived tactic for starting a state-wide campaign.

Most importantly, neither you, nor Commerce Secretary Charles Dusseau have any business interceding in these administrative hearing matters, especially at a time when the order requiring rate reductions and refunds is under reconsideration by the PSC and when ~~that agency will~~ vote

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tomorrow on what level, if any, interim rate increase to grant SSU in its most recent pending rate case. Your communications are inappropriate ex parte communications and have no place in any Section 120.57(1), F.S. proceeding. That you represent the "appointing authority" for PSC commissioners and are, therefore, in a position of bullying their result in these cases makes your interference all the more objectionable.

I plan to subpoena SSU lobbyist Jeff Sharkey to find what role, if any, he played in orchestrating this concerted attack on the PSC at this hour. In the interim, I would respectfully request that you immediately write Susan Clark and retract your letter. I would also ask that you direct Dusseau to withdraw his condescending and presumptuous communication of January 2, 1996, and advise him that he, too, has no legitimate business shilling for SSU against the interest of my clients.

Respectfully,


Michael B. Twomey

Attorney for the Sugarmill Woods Civic Association, Inc.,
Marco Island Civic Association, Inc., the Spring Hill
Civic Association, Inc., the Concerned Citizens of Lehigh Acres, and
the Harbour Woods Civic Association

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