IN THE SUPREME COURT OF THE STATE OF FLORIDA

LEON COUNTY,

Appellant,

vs. CASE NO. 63,892

FLORIDA PUBLIC SERVICE COMMISSION, etc., et al.

Appellee.

FILED

SEP 8 1983

SID J. WHITE
CLERK SUPREME COURT

By ______
Chief Deputy Clerk

POLK COUNTY,

Appellant,

vs. CASE NO. ~~63,875~~

FLORIDA PUBLIC SERVICE COMMISSION, etc., et al.

Appellee.

see amended brief

BRIEF OF APPELLANT POLK COUNTY

MARK F. CARPANINI
Office of County Attorney
Post Office Box 60
Bartow, Florida 33830
Attorney for Polk County

TABLE OF CONTENTS

CITATIONS OF AUTHORITY . . . . . . . . . . . . . . . . . . ii

SYMBOLS AND DESIGNATION OF PARTIES . . . . . . . . . . . . 1

STATEMENT OF THE CASE AND FACTS . . . . . . . . . . . . . . 2

ARGUMENT . . . . . . . . . . . . . . . . . . . . . . . . . 6

THE ORDER OF THE COMMISSION ADOPTING RULE 25-9.525 SHOULD BE REVERSED BECAUSE THE ECONOMIC IMPACT STATEMENT PREPARED IN CONNECTION THEREWITH IS PATENTLY ERRONEOUS. . . . . 6

RULE 25-9.525 OPERATES TO DENY EXTRA-MUNICIPAL CUSTOMERS OF THE EQUAL PROTECTION OF THE LAW. . . . 13

RULE 25-9.525 OPERATES TO DEPRIVE EXTRA-MUNICIPAL CUSTOMERS OF THE DUE PROCESS OF LAW. . . . . . . . . . . . . . . . . . . . . . . 17

RULE 25-9.525 IS BEYOND THE JURISDICTION AND AUTHORITY OF THE COMMISSION IN THAT IT WOULD GRANT MUNICIPALITIES WHO OPERATED AN ELECTRIC UTILITY THE APPARENT AUTHORITY TO LEVY A TAX BEYOND THEIR CORPORATE BOUNDARIES IN VIOLATION OF THE CONSTITUTION OF THE STATE OF FLORIDA. . . . 18

SUMMARY . . . . . . . . . . . . . . . . . . . . . . . . . 22

CERTIFICATE OF SERVICE . . . . . . . . . . . . . . . . . . 23

# CITATIONS OF AUTHORITY


| CASES | PAGE |
|---|---|
| Belcher Oil Co. v. Dade Co., 271 So 2d 118 (Fla. 1972) | 19 |
| City of Ocoee v. Bell 108 So 2d 766 (2 DCA, 1959) | 8, 19 |
| City of Orlando v. Natural Gas and Appliance Co., Inc., 57 So 2d 853 (Fla. 1952) | 19 |
| City of Tallahassee v. Mann 411 So 2d 162 (Fla. 1981) | 3, 18 |
| City of Tampa v. Cooper 17 So 2d 785 (Fla. 1944) | 13 |
| Clay Utility Co. v. City of Jacksonville 227 So 2d 516 (1 DCA, 1969) | 13, 16 |
| Department of Environmental Regulation v. Leon County, 344 So 2d 297 (1 DCA, 1977) | 12 |
| Department of Revenue v. Amrep Corp. 358 So 2d 1343 (Fla. 1978) | 15 |
| Kathleen Citrus Land Co. v. City of Lakeland 169 So 356 (Fla. 1936) | 20 |
| North Bay Village v. Isle of Dreams Broadcasting Corp., 46 So 2d 496 (Fla. 1950) | 9 |
| St. Michaels Utilities Commisison v. Federal Power Commission, 377 F 2d 912 (4th Cir. 1967) | 14 |

| OTHER | |
|---|---|
| Article I, Section 2, Constitution the State of Florida | 13 |

| | |
|---|---|
| Article I, Sections 1 and 9, Constitution the State of Florida | 17 |
| Article VII, Sections 1 and 9, Constition of the State of Florida | 21 |
| Section 120.54, Florida Statutes | 12 |
| Opp. Atty. Gen. 075-20 (1975) | 8, 19 |

## SYMBOLS AND DESIGNATION OF PARTIES

The Counties of Polk and Leon will be referred to as Polk County, Leon County, or Appellant.

The City of Tallahassee, the City of Lakeland, and the Orlando Utilities Commission will be referred to by name or as Appellees. The Florida Public Service Commission will be referred to by name, as the Commission, or Appellee.

References to pages in Volumes I and II of the record in this proceeding will be designated (Vol. I) or (Vol. II) as the case may be. Reference to exhibits contained in Volume II will be designated (Exh ). Reference to pages in the official reporter's transcribed testimony will be designated (TR ).

STATEMENT OF THE CASE AND FACTS

This proceeding deals with the validity and constitutionality of Rule 25-9.525 adopted by the Florida Public Service Commission on May 26, 1983 which relates to surcharges imposed by municipally operated electric utilities on customers located beyond municipal limits. (Vol. II, 21)

On February 25, 1983, the Commission issued an Order proposing the adoption of Rule 25-9.525. (Vol. I, 2)

On March 4, 1983, Notice of Proposed Rule 25-9.525 was published in the Florida Administrative Weekly. (Exh 1B) Polk County, pursuant to Section 120.54, Florida Statutes, requested a hearing on the proposed rule. (Vol.I, 6)

The proposed rule provided in substance that a municipally operated electric utility may impose on those customers located beyond its corporate limits a surcharge equal to the public service tax imposed by a municipality upon persons located within its corporate limits.

The stated purpose of the rule is to preclude the possibility of price discrimination among municipal electric customers by use of a surcharge or public service tax within a specified service class. (Exh 1B)

In connection with the proposed rule an Economic Impact Statement was prepared by the Commission staff. (Exh 1C) Prior to the adoption of the Rule, the Commission had issued a series of Orders to Show Cause to various municipalities which operate electric utilities why they should be allowed to retain the surcharge in that it appeared to result in a discriminatory rate structure. Orders to Show Cause were issued to the Cities of St. Cloud, Moore Haven, Green Cove Springs, Quincy, Vero Beach, Wauchula, Newberry, Blountstown, Ft. Meade, Bushnell, Alachua, Bartow, Lakeland, as well as The Lake Worth Utilities Commission, Gaineville/Alachua County Regional Utilities and the Orlando Utilities Commission. (Exh 2)

The City of Tallahassee challenged the Public Service Commission's jurisdiction to inquire into the validity of the surcharge imposed by that city. The Florida Supreme Court in the case of City of Tallahassee vs. Mann, 411 So 2d 162 (Fla. 1981) held that while the Public Service Commission had no jurisdiction to set rates for a municipally operated utility, it had authority over the "rate structure" of all electric utilities in the state since the differential charges to customers within and without its corporate limits constitute a classification

system and thus are a matter of "rate structure" and therefore subject to the jurisdiction of the Florida Public Service Commission.

A hearing was held by the Commission on the surcharge imposed by the City of Tallahassee on July 28 and 29, 1982 and on October 4, 1982 the Commission issued an order determining that the 15% surcharge imposed by the City of Tallahassee on its extramunicipal customers should be eliminated. The Commission concluded that the City's classification of customers by location within or without its city limits is unduly discriminatory. (Exh 4)

In its Order of October 4, 1982, regarding the City of Tallahassee's surcharge, the Commission noted as follows:

> The City did not rely upon the existence of its in-city utilities tax as a justification for imposing the surcharge, and no evidence was received in support of that approach. We are therefore unable to consider that justification in rendering our decision herein. Nevertheless, should the City, at a later date, file a tariff providing for an out-of-city surcharge, we would not consider that as unjustly discriminatory rate structure as found herein. (Exh 4)

The Commission reasoned that some municipalities might experience difficulties in refinancing debts secured by a pledge of utility taxes. (Exh 4) The rule appears to be predicated upon the reasoning contained in the

Commission's Order of October 4, 1982 although there is no reference to this concept in either the rule nor the Economic Impact Statement which accompanied the rule.

A hearing on the proposed rule (Exh 1B,C) was held before a hearing officer on March 23, 1983. Thereafter, the hearing officer issued a recommendation that the proposed rule be withdrawn. (Recommendation of Hearing Officer) The Commission issued an Order adopting the rule on May 26, 1983 (Vol.II, 21).

Polk County filed its Notice of Appeal on June 24, 1983. (Vol.II, 23). On that same date Leon County filed a Petiton for Review of Final Agency Action. (Vol.II, 24)

On July 1, 1983, this Court consolidated these cases for all appellate purposes.

On July 25, 1983, this Court entered separate Orders affirming the party status as Appellees of the Cities of Tallahassee and Lakeland and the Orlando Utilities Commission.

ARGUMENT

I.

THE ORDER OF THE COMMISSION ADOPTING RULE 25-9.525 SHOULD BE REVERSED BECAUSE THE ECONOMIC IMPACT STATEMENT PREPARED IN CONNECTION THEREWITH IS PATENTLY ERRONEOUS.

The Economic Impact Statement prepared in connection with the rule is erroneous on its face. The Economic Impact Statement provides in its summary the following:

> Since municipalities would be required (under the rule) to charge the same rates to all customers within the same class, specific price discrimination is prohibited by the rule. (Exh 1C)

The proposed rule provides essentially that a municipality may impose on those customers outside of its corporate limits a surcharge equal to the public service tax imposed by a municipality within its corporate limits.

A surcharge is an element of a rate, but a utility tax is not in any way a component of a rate. The Commission recognized this in its Order of October 4, 1982 in the City of Tallahassee surcharge proceeding and stated:

> Where a municipality charges an out-of-city surcharge equal to its in-city utilities tax, a rate differential still exists. The surcharge is a charge for electric utility service, while the utilities tax is simply a tax. (Exh 4)

The Commission has also recognized this in Orders to Show Cause issued to the cities of Ft. Meade, Bushnell, Alachua, St. Cloud, Moore Haven, Green Cove Springs, Quincy, Wauchula, Newberry, Blountstown, the Lake Worth Utilities Authority, and the Orlando Utilities Commision. (Exh 2)

The Public Service Commission stated in each of these Orders:

> The existence of a utility tax within the city does not eliminate the differential. A utility tax collected by a city under its power of taxation is not a rate for electric service. A differential on electric utility rates within and without the city limits still exists. (Exh 2)

Since the surcharge is an element of the electric rate and the utility tax (also called a Public Service Tax) is a tax levied by a muncipality to raise revenues, it cannot be said that the rule operates to require a municipality to charge the same rates to all customers within the same class, thereby prohibiting specific price discrimination.

To the contrary, the rule operates to perpetuate and sanction discriminatory rates being charged by many municipalities as a result of the imposition by those municipalities of a surcharge.

The Economic Impact Statement is also erroneous in the following respect: The Economic Impact Statement assumes a situation whereby a municipality has imposed a surcharge on extra-municipal customers which is higher than the rate of a public service tax imposed upon municipal customers. (Exh 1C) The Impact Statement further explores three options available to the municipality were the proposed rule adopted. They were:

1. The within-city tax can be increased to equal the rate of the out-of-city surcharge.

2. The out-of-city surcharge can be lowered to equal the within-city tax.

3. The surcharge can be reduced and the tax can be raised to equal some aggregate rate in between the two original rates. (Exh 1C)

The Economic Impact Statement goes on to provide "Option (2) would tend to reduce overall tax revenues." (Exh 1C)

This statement is erroneous on its face in that a surcharge, as noted earlier by the Commission itself, is not a tax, therefore a reduction in the surcharge would not result in a loss of tax revenues. Furthermore, a municipality is forbidden by law from imposing such a tax upon those lying beyond its municipal boundaries. City of Ocoee v. Bell, 108 So 2d 766 (2 DCA, 1959); Opp. Atty. Gen. 075-20 (1975).

The Economic Impact Statement further provides as it relates to Option (2): "In addition, depending on which services are reduced for lack of funds either out-of-city and/or within city residents will suffer a corresponding loss in benefits." (Exh 1C) This statement is erroneous in its assumption that municipalities routinely provide a variety of services beyond their municipal boundaries. Absent an agreement or legislative authority to the contrary, municipalities are prohibited by law from providing services to those who live beyond their municipal boundaries. North Bay Village v. Isle of Dreams Broadcasting Corporation, 46 So 2d 496 (Fla. 1950)

It should be noted that the author of the Economic Impact Statement was of the opinion that municipalities provide not just utility services beyond their corporate boundaries, but a broad spectrum of services, as the following testimony before the hearing officer indicates:

> Q. Now, the Economic Impact Statement goes on to further discuss the consequences of reduction in tax revenues, and the statement is made, "In addition, depending on which services are reduced for lack of funds, either out-of-city and/or within city residents will suffer a corresponding loss in benefits."
>
> Q. What benefits were you referring to in the Economic Impact Statement?

> A. Whatever benefits the municipality may have been supplying to within-city residents and out-of-city residents--police services, fire services, parks, anything else that they may have been funding with those revenues. (TR 29-30)

As the Commission noted in the City of Tallahassee surcharge proceeding "We find no rational basis in regulatory theory to base a rate structure on the cost of non-utility services". (Exh 4)

If the impacts associated with Option (2) are misperceived, the impacts associated with Option (3) are erroneous as well. Option (3) provides that the surcharge can be reduced and the tax can be raised to equal some aggregate rate in between the two original rates. Due to the difference in character between a surcharge and a public service tax, the only way the rate can be equalized is to eliminate the surcharge and charge a uniform rate across corporate boundaries.

The Economic Impact Statement also provides:

> In adopting the rule, the Commission would be following a long standing practice that customers of a given class of service are always charged the same rate, the inherent assumption being that all customers within the class bear equal degrees of cost causality as well as deserve to receive the same basic quality of service. (Exh 1C)

In actuality, for reasons previously explained, in adopting the rule the Commission sanctioned the imposition of a higher rate on extra-municipal customers which may or may not bear any relationship at all to the cost of service received.

At the hearing on the proposed rule, a staff member of the Commission testified in response to a question from the Hearing Officer as follows:

> Q. I think, if I understand what Mr. Steinmeyer is getting at, it's that the imposition of a surcharge to bring about equality with respect to taxes is an abandonment of the cost of service of cost based pricing. And I think he's basically asking did the staff in devising this rule give any thought to the fact that this is in fact a departure from that, and do you have any justification for that?
> (Dialogue omitted)
>
> A. It is correct that cost was not considered. It is an abandonment of the cost of service. It is an attempt to comply with the perceived direction of the Commission established in the Tallahassee surcharge case. (TR 9-10)

In addition, the Commission stated in its Order of October 4, 1982:

> Changes in city limits appear to bear little, if any, relation to changes in cost. An area will remain outside the city limits in the absence of an affirmative vote. Thus, customers in the City's electric utility service area will have their rate classification determined, not by the cost of service to the area within which they live, but by

> the ballot. We cannot reconcile this fact with the need to avoid undue discrimination in establishing rate structure. (Exh 4)

The methodology used in developing the Economic Impact Statement is defined as: "Cost and benefits were specified as changes in tax burdens and public services as distributed across the service population of the municipalities in question". (Exh 1C) Municipalities may not tax extra-municipal customers, nor may they provide services to extra-municipal customers absent an agreement or legislative authority to do so, therefore, the methodology used in formulating the Economic Impact Statement is in and of itself invalid.

Section 120.54(2)(c), Florida Statutes, provides in pertinent part:

> (c) Failure to provide an adequate statement of economic impact is grounds for holding the rule invalid; . . .

The First District Court of Appeal stated in the case of Department of Environmental Regulation v. Leon County, 344 So 2d 297 (1 DCA, 1977) that a hearing officer may inquire into the validity of an economic impact statement. The hearing officer issued a recommendation that the proposed rule be withdrawn (Recommendation of Hearing Officer), however, the Commission adopted the rule in

light of the fact that the Economic Impact Statement prepared in connection with the rule was patently erroneous and misleading. For the reasons shown, it is the position of the Appellant, Polk County, that the proposed rule should be declared invalid on the ground that the Economic Impact Statement prepared in connection therewith is invalid with respect to both its substance and methodology.

## II.

### RULE 25-9.525 OPERATES TO DENY EXTRA-MUNICIPAL CUSTOMERS OF THE EQUAL PROTECTION OF THE LAW.

The proposed rule is violative of the guarantee of the equal protection of the law provided by Article I, Section 2, Constitution of the State of Florida.

The rule purports to equalize rates, however, the rule would operate in such a manner as to sanction discriminatory rates. It is not disputed by Polk County that a municipality may impose a surcharge if there is a higher cost associated with serving extra-municipal customers. City of Tampa vs. Cooper, 17 So 2d 785 (Fla. 1944); Clay Utility Company vs. City of Jacksonville, 227 So 2d 516 (1 DCA, 1969), however, as was noted by the First District Court of Appeals in the case

of Clay Utility Co. vs. City of Jacksonville, 227 So 2d 516 (1 DCA, 1969) wherein a surcharge imposed by the City of Jacksonville was considered:

> A review of the decisions rendered by the courts of other jurisdictions establishes the weight of authority to be that a municipality may not lawfully charge customers outside of its geographical limits more for electricity than that charged similar customers within its limits merely because the former group is outside and the latter group inside the geographical boundaries of the municipality. Id at 517-518

The rule would sanction a discriminatory rate structure with absolutely no inquiry into the issue of the relative costs incurred in providing each class of customer identical service. As the Commission itself noted: "Regulatory economic theory dictates that the price of a product should reflect its costs." (Exh 4) In order for the Commission to adopt a rule which on its face discriminates between similarly situated classes of customers a distinction must be drawn between the two classes in question, namely municipal and extra-municipal customers, in order for there to be some basis for dissimilar treatment.

As was noted by the U. S. Fourth Circuit Court of Appeals in the case of St. Michaels Utilities Commission v. Federal Power Commission, 377 F 2d 912 (4th Cir. 1967) construing a provision of the Federal Power Act:

> Discrimination in rates is prohibited by Section 205(b) of the Federal Power Act 16 U. S. C. A. Section 824 d(b). This provision is closely modeled on the Interstate Commerce Acts, 47 U. S. C. A. Section 1 et seq. The purpose of the latter "... is to prevent favoritism by insuring equality of treatment on rates for substantially similar services. (Cites omitted) Thus it has been held that differences in rates are justified where they are predicated upon difference in facts - costs of services or otherwise - and where there exists a difference in rates which is attacked as illegally discriminatory, judicial inquiry devolves on the question of whether the record exhibits factual differences to justify classifications among customers and differences among the rates charged them. Id at 915

The Public Service Commisison itself noted in its Order of October 4, 1982 in the City of Tallahassee proceeding:

> We consider the principle of avoidance of undue discrimination to be of particular relevance to this case. The general purpose of establishing rate classifications is to have a generally homogeneous group of customers so that rates can be designed to track their cost causation pattern. Unless a classification is based upon cost factors with a fairly high correlation to membership in the class, a fairly homogeneous group of customers is not obtained and undue discrimination may result. (Exh 4)

This Court stated in the case of Department of Revenue vs. Amrep Corp. , 358 So 2d 1343 (Fla. 1978).

> The pole star for judging the validity of a particular classification is whether that classification "rest(s) upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike" (cites omitted) Id at 1349

It has previously been demonstrated that the proposed rule does not achieve its stated goal and purpose, namely, to preclude the possibility of rate discrimination and no other goal or purpose is advanced in the rule itself or in the Economic Impact Statement.

Further, there does not appear any assertion in either the rule, the Economc Impact Statement, or the record which indicates there is any difference between municipal or extra-municipal customers which would justify such disparate treatment. To the contrary, at least one Florida Court has stated that such difference in and of itself does not justify dissimilar treatment (Clay Utility Co. v. City of Jacksonville,, 227 So 2d 516 (1 DCA, 1969); nor was there any evidence whatsoever before the Commission that a municipality might experience difficulty in refinancing debt secured by a Public Service Tax, therefore, it appears the rule would, in its operation, constitute a denial of the extra-municipal customer of equal protection under the law as guaranteed by the Constitution of the State of Florida.

## III.

### RULE 25-9.525 OPERATES TO DEPRIVE EXTRA-MUNICIPAL CUSTOMERS OF THE DUE PROCESS OF LAW.

The proposed rule in its application would result in a denial of the due process of law as guaranteed by Article I, Section 9 of the Constitution of the State of Florida.

There are many municipalities in Florida who currently operate electric utilities who do not impose a surcharge. (Exh 2)

If the proposed rule became effective, these cities might, if they already imposed a utility tax, simply file a tariff imposing a surcharge thereby subjecting the extra-municipal customer to the payment of a discriminatory rate, or in the event a municipality levied such a tax in the future, it could simply file a tariff imposing a surcharge on its extra-municipal customers thereby subjecting the extra-municipal customer to the payment of a discriminatory rate.

In neither case would the extra-municipal customer be afforded any meaningful due process rights. In confirming that the Florida Public Service Commission had jurisdiction to examine the City of Tallahassee's

differential charges to customers within and without its corporate limits, the Florida Supreme Court observed in the case of City of Tallahassee v. Mann, 411 So 2d 162 (Fla. 1981):

> The rates for service supplied by the city's utility are set by the Tallahassee City Commission. That body is charged with the duty of setting reasonable rates. The Public Service Commission has no authority over those rates. If the rates are unreasonable, the ratepayers have recourse to the city commission. Only citizens of Tallahassee, however, have the power of ballot over their city commissioners. Id at 163.

This language indicates that the Commission, in the opinion of this Court, is the only agency which might serve to protect the interests of the extra-municipal customer. Since the adoption of the rule, even that level of protection afforded the extra-municipal customer has disappeared, and the extra-municipal customer is forced to bear the burden of a surcharge which results in a discriminatory rate without recourse regardless of the justification for the surcharge on the basis of cost or any other factor.

IV.

RULE 25-9.525 IS BEYOND THE JURISDICTION AND AUTHORITY OF THE COMMISSION IN THAT IT WOULD GRANT MUNICIPALITIES WHO OPERATED AN ELECTRIC UTILITY THE APPARENT AUTHORITY TO LEVY A TAX BEYOND THEIR CORPORATE BOUNDARIES IN VIOLATION OF THE CONSTITUTION OF THE STATE OF FLORIDA.

It is clear a public service tax is a tax which is levied upon a person who purchases a given commodity. This Court noted in the case of City of Orlando v. Natural Gas and Appliance Co., Inc. , 57 So 2d 853 (Fla. 1952):

> The (public service) tax is upon the purchaser of the commodity and is upon the person who makes the purchase. It makes no difference whether the commodity is purchased from a public utility or a private utility... The tax is not upon the person or the public utility selling the commodity, the tax is upon the person who purchases the commodity. Id at 855

In addition, the levy by a municipality of a public service tax is entirely within the discretion of the governing body of the municipality. Belcher Oil Co. v. Dade Co. , 271 So 2d 118 (Fla. 1972). A municipality may not levy a utility tax on customers located beyond their corporate limits. City of Ocoee v. Bell, 108 So 2d 766 (2 DCA, 1959); Opp. Atty. Gen. 075-20.

Rule 25-9.525 would not require any showing by any municipality that a surcharge on customers located beyond its corporate limits was justified on the basis of cost or any other factor. The Rule represents an abandonment by the Commission of a cost causality approach to regulatory economic theory. (TR 9-10) (Recommendation of Hearing Officer)

Revenues received by a municipality from a municipally operated electric utility are used to finance the cost of municipal government unrelated to the provision of utility services. (TR 38)

A burden directly or indirectly imposed upon persons or property for the support of governmental activities is an exercise of the taxing power. Kathleen Citrus Land Co. v. City of Lakeland, 169 So 356 (Fla. 1936).

Taxation is an attribute of the sovereign and requires the consent of the governed through duly accredited representatives. It can be exercised only pursuant to a valid statute containing definite limitations. Kathleen Citrus Land Co. v. City of Lakeland,169 So 356 (Fla. 1936).

Although admittedly calling for a legal conclusion, a question was put to a staff member of the Commission with the following results:

> Q. Do you think that one of the effects of this rule is to provide a municipality with the power to levy what is the equivalent of a public service tax or a utility tax beyond its corporate limits.
>
> A. Yes. (TR 12)

Furthermore, in his recommendation that the Commission withdraw the rule, the hearing officer stated:

> First, the policy amounts to an abandonment of cost based pricing, which is the preferred approach to setting rates. Next the surcharge in my view is a tax placed on non-residents by the municipality. (Recommendation of Hearing Officer)

Inasmuch as Rule 25-9.525 would authorize the imposition of a surcharge on customers located beyond the corporate limits of a muncipality which is equal to the amount of a utility tax levied on customers located within the municipality without any justification of such surcharge required by the Commission on the basis of cost or any other factor and revenues received by a municipality from a municipally operated electric utility are used to finance the cost of municipal government unrelated to the provision of utility services, the rule would grant a municipality the apparent authority to levy a tax beyond its corporate limits in violation of the Constitution of the State of Florida, Article VII, Sections 1 and 9.

## SUMMARY

In summary, based upon the foregoing argument and authority, Rule 25-9.525 should be declared invalid and unconstitutional on the grounds that the Economic Impact Statement prepared in connection with the rule is invalid, the rule would in its application constitute a denial of equal protection of the law to the extra-municipal customer, the rule in its application would deprive the extra-municipal customer of property without due process of law; and the rule would grant a municipality the apparent authority to levy a tax beyond its corporate limits in violation of the Constitution of the State of Florida.

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Brief was furnished by first class U. S. mail this 6 day of September, 1983 to the following:

Roy C. Young
Young, van Assenderp, Varnadoe & Benton, P.A.
Post Office Box 1833
Tallahassee, Florida 32301

William S. Bilenky
General Counsel
Florida Public Service Commission
101 East Gaines Street
Tallahassee, Florida 32301

Patrick K. Wiggins
Deputy General Counsel
Florida Public Service Commission
101 East Gaines Street
Tallahassee, Florida 32301

Frederick M. Bryant
Pennington, Wilkinson & Dunlap
Post Office Box 3985
Tallahassee, Florida 32315

Davisson F. Dunlap, Jr.
Pennington, Wilkinson & Dunlap
Post Office Box 3985
Tallahassee, Florida 32315

F. E. Steinmeyer, III
Leon County Attorney
122 South Calhoun Street
Tallahassee, Florida 32301

MARK F. CARPANINI