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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application of Southern)
States Utilities, Inc. and Deltona)
Utilities, Inc. for Increased)
Water and Wastewater Rates in)
Citrus, Nassau, Seminole, Osceola,)
Duval, Putnam, Charlotte, Lee,)
Lake, Orange, Marion, Volusia,)
Martin, Clay, Brevard, Highlands,)
Collier, Pasco, Hernando, and)
Washington Counties.)
_____)

Docket No. 920199-WS
Filed: November 8, 1993

**RESPONSE OF SOUTHERN STATES UTILITIES, INC. TO
CITRUS COUNTY'S MOTION FOR REDUCED INTERIM RATES
PENDING JUDICIAL REVIEW, FOR RECALCULATED CUSTOMER BILLS,
REFUNDS AND IMPOSITION OF PENALTIES FOR
VIOLATING AUTOMATIC STAY**

Southern States Utilities, Inc. ("Southern States"), by and through its undersigned counsel, hereby responds to Citrus County's Motion for Reduced Interim Rates Pending Judicial Review, For Recalculated Customer Bills, Refunds and Imposition of Penalties for Violating Automatic Stay and states as follows:

1. The premise of Citrus County's request for "reduced" interim rates is that some customers would subsidize other customers under the final rate structure approved by the Commission in Order No. PSC-93-0423-FOF-WS issued March 22, 1993 ("Final Order") and reaffirmed in Order No. PSC-93-1598-FOF-WS issued November 2, 1993 ("Order on Reconsideration"). As an initial matter, Southern States believes Citrus County lacks standing to object to the final rate structure on behalf of customers served by

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the Spring Hill systems located in Hillsborough County.¹ It is not appropriate for Citrus County to attempt to use facts specific to the Spring Hill systems to argue against the final rate structure in light of its lack of legal standing to advance such arguments. Only Spring Hill customers and/or their authorized representative, including the Office of Public Counsel who took no position on rate structure issues in this proceeding, may object to a Commission Order as it affects them. The improper character of Citrus County's arguments is demonstrated not only by the absence of objections from the Spring Hill customers and/or their legal representative but also the fact that if the final "uniform" rate structure is reversed in favor of stand alone rates, as Citrus County advocates, and the Commission authorizes a reduced bulk wastewater rate for service provided by Southern States to Hernando County, as Hernando County and Southern States both advocate in Docket No. 930880-WS, the Spring Hill customers will be adversely affected (i.e., Spring Hill's customers will have to absorb 100% of the resulting revenue deficiency under stand alone rates as opposed to spreading the impact of the deficiency over all of Southern States' wastewater customers in this proceeding). For these

¹In Hamilton County Board of County Commissioners and City of Jasper, Florida v. TSI Southeast, Inc. and State of Florida Department of Environmental Regulation, 12 F.A.L.R. 3774, 3781 (Final Order issued September 7, 1990), DER, relying on federal case law, noted that counties and cities do not have the legal authority to represent before administrative agencies what the county or city believes to be the interests of its residents. Hence, Citrus County lacks standing to advance the alleged interests either of the citizens of Citrus County or the citizens of Hernando County who take service from Southern States' Spring Hill systems.

reasons, Citrus County's citation to facts pertinent to Spring Hill customers in Hernando County should be disregarded by the Commission.

2. The "subsidization" premise of Citrus County's arguments in favor of "reduced" interim stand alone rates also is flawed by the County's own admission. In its motion, Citrus County admits that subsidization exists under the interim rate structure. Page 12, paragraph 21.² This subsidization occurred when the Commission approved an "across-the-board" percentage rate increase for interim rate purposes based on consumption data. See Order No. PSC-92-0948-FOF-WS issued September 8, 1992. Given this fact, it is clear that Citrus County's argument is one of "let others provide the subsidies, but not Citrus County or systems served by Southern States which are located in Citrus County."

3. The peculiar nature of Citrus County's subsidy argument is that Citrus County itself, as a customer of Southern States, has received an immediate benefit from the Commission's uniform rate structure. On a stand alone basis, Citrus County and its taxpayers would pay higher rates to Southern States for service. In addition, 10 of the 11 locations served by Southern States in Citrus County also have received an immediate benefit from the Commission's uniform rate structure. Only one location, Sugar Mill Woods, as cited in Citrus County's motion, has not received an

²The cited portion of the County's motion states as follows:

Under the status quo, as represented by the interim rates, a large number of customers are already paying subsidies in excess of their stand alone rates.

immediate benefit. However, the Commission specifically addressed the Sugar Mill Woods situation in its Order on Reconsideration. Addressing the motion for reconsideration filed by Cypress and Oak Villages Association (a Sugar Mill Woods homeowners association), the Commission rejected the argument that the final uniform rate structure was unfair, unreasonable and discriminatory to customers served by the Sugar Mill Woods systems. Citing the fact that only 7 of the 127 systems affected would have lower water or wastewater rates on a stand alone basis,³ the Commission found as follows:

Based on that comparison, we find that the wide disparity of rates calculated on a stand alone basis, coupled with the above cited benefits of uniform, statewide rates, outweigh the benefits of the traditional approach of setting rates on a stand-alone basis.

Final Order, at 95; Order on Reconsideration, at 12. Thus, the Commission already has concluded on at least two occasions that, on the basis of the facts presented in the record, the uniform rates are fair and reasonable. See Utilities Operating Co. v. Mayo, 204 So. 2d 321 (Fla. 1967).

4. Another factor not recognized by Citrus County is that customers served by the Sugar Mill Woods system consume more than twice as much water as the average consumption of the other water systems included in this proceeding. (See Hearing Exhibit 39, Volume I, Book 1 of 4, E Schedules - Water (Sugar Mill Woods'

³To the extent the Commission finds any relevance in Citrus County's allegations concerning the "fixed income" of customers served by these 7 systems, Citrus County ignores the immediate benefits to customers with "fixed incomes" served by the 120 systems with lower rates under the uniform rates ordered by the Commission.

average monthly consumption: approximately 15,000 gallons; average monthly consumption of remaining systems: approximately 6,800 gallons)). If rates were established on a stand alone basis, no conservation incentive would exist to attempt to achieve lower consumption levels by Sugar Mill Woods customers.

5. Citrus County mistakenly characterizes the status quo as the interim rates established by the Commission pursuant to Order No. PSC-92-0948-FOF-WS issued September 8, 1992. The Commission authorized uniform rates were implemented as of September 15, 1993 in a manner both provided for in the Commission's Final Order and consistent with Commission practice. Therefore, the Commission's uniform rates represent the status quo at the time Citrus County filed its Notice of Appeal on October 8, 1993, subsequently amended on October 12, 1993.⁴ Citrus County's attempt to attribute an undeserved degree of significance to the stamping of tariffs by Commission Staff, as required under the Final Order and Commission practice, should be rejected. Citrus County (through its counsel) is familiar with Commission practice and procedures. Citrus County had the option of seeking appellate review of the Final Order within thirty days after its issuance. Citrus County chose not to pursue an appeal of the Final Order until the Commission's uniform rates were implemented by Southern States and the previously authorized interim rates no longer were effective. In fact, Citrus County acknowledges the lawfulness of Southern States'

⁴Southern States' motion to dismiss Citrus County's Amended Notice of Appeal as untimely is pending before the Appellate Court.

implementation of the uniform rates in paragraph 7 of its Motion by citing Rule 25-22.060(1)(c), Florida Administrative Code, which provides that a motion for reconsideration does not serve automatically to stay the effectiveness of a final order. Citrus County chose not to request a stay of the effectiveness of the uniform rates pending disposition of its Motion for Reconsideration. Citrus County's recitation of suggestions the County made to Southern States in an effort to avoid Southern States' implementation of the Commission's interim rates are meaningless. The Commission twice reaffirmed the legal validity of uniform rates and the legal authority of Southern States to implement them.

6. Since Citrus County chose to wait until Southern States already had implemented the authorized uniform rates before filing a notice of appeal or otherwise seeking a stay, it was impossible for Southern States to act in a manner consistent with a "stay" of such implementation. A "stay" is defined by Black's Law Dictionary, 5th Ed. (1979), at 1267, as follows:

To stop, arrest or forbear. To "stay" an order or decree means to hold it in abeyance, or refrain from enforcing it.

Accordingly, any party seeking to stay a final order must seek and procure the stay prior to implementation of the final order. See, e.g., Palm Beach Heights Development and Sales Corporation v. Decillis, 385 So. 2d 1170, 1171 (Fla. 3d DCA 1980), where the court held:

PBH is entitled to a stay of the final judgment only by the posting of the bond in

the amount set forth in Rule 9.310(b), and the trial court is not empowered to deprive the Decillises of their right to execute on the judgment by ordering any lesser bond or otherwise setting less onerous conditions. (citations omitted).

7. As verified in the affidavit of Forrest L. Ludsen, Southern States' Vice President, Rates and Customer Services, attached hereto as Appendix A, the uniform rates already were effective, the Company's billing system had been modified to charge the uniform rates, billing cycles had been changed and implemented to accommodate the change to monthly billing, meter reading schedules had been changed and implemented to accommodate the change to monthly billing, pro rata billing mechanisms had been implemented and other related activities (billing under the uniform rates, i.e., disconnects, etc.) carried out prior to the time Citrus County decided to appeal the Commission's Final Order. From Southern States' perspective, the situation would be akin to staying the execution of a prisoner after the electric switch had been thrown.

8. Moreover, Rule 25-22.061(3)(a), Florida Administrative Code, provides that where a rate increase is involved, the Commission must vacate the automatic stay upon posting of a bond or corporate undertaking with the Commission.⁵ Southern States acted

⁵The terms and conditions of any bond or corporate undertaking which may be required by the Commission cannot be determined until December 3, 1993, the date following the last day on which parties to this proceeding may file a notice of appeal with the State of Florida, First District Court of Appeal. In addition, Citrus County incorrectly concludes in paragraph 22 of its Motion that Southern States inappropriately discussed issues concerning its prospects of success on appeal as such relate to its position that

diligently to request that the Commission vacate the "stay" to the extent one could be considered in effect by filing its Motion to Vacate the Automatic Stay seven (7) days after Citrus County filed its Amended Notice of Appeal. Since such a stay is automatically vacated upon posting of a bond or corporate undertaking, the refunds and penalties requested by Citrus County are unauthorized under Section 367.161, Florida Statutes, unwarranted and, understandably, without precedent.

Respectfully submitted,



KENNETH A. HOFFMAN, ESQUIRE
Messer, Vickers, Caparello,
Madsen, Lewis, Goldman & Metz, P.A.
P. O. Box 1876
Tallahassee, Florida 32302-1876
(904) 222-0720

and

BRIAN P. ARMSTRONG, ESQUIRE
Southern States Utilities, Inc.
1000 Color Place
Apopka, Florida 32703
(407) 880-0058

Attorneys for Southern States
Utilities, Inc.

no bond or corporate undertaking is necessary. Rule 25-22.061 (1)(a) states that the Commission may consider "such factors as those set forth in subparagraph (1)(b)2" in determining the amount and conditions of the bond or corporate undertaking. "These factors" include "[t]erms that will discourage appeals when there is little possibility of success" as provided in subparagraph (1)(b)1 of Rule 25-22.061.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was furnished by U. S. Mail, this 8th day of November, 1993, to the following:

Harold McLean, Esq.
Office of Public Counsel
111 West Madison St. Room 812
Tallahassee, FL 32399-1400

Catherine Bedell, Esq.
Florida Public Service
Commission
Div. of Legal Services, Rm. 212
101 East Gaines Street
Tallahassee, FL 32399-0850

Susan W. Fox, Esq.
MacFarlane Ferguson
P. O. Box 1531
Tampa, FL 33601

Michael S. Mullin, Esq.
P. O. Box 1563
Fernandina Beach, FL 32034

Larry M. Haag, Esq.
County Attorney
107 North Park Ave., Ste. 8
Inverness, FL 34450

Michael Gross, Esq.
Assistant Attorney General
Department of Legal Affairs
Room PL-01, The Capitol
Tallahassee, FL 32399-1050

Michael B. Twomey, Esq.
Route 28, Box 1264
Tallahassee, FL 32310


BY KENNETH A. HOFFMAN, ESQ.

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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Water and Wastewater Rates in)	Docket No. 920199-WS
Citrus, Nassau, Seminole, Osceola,)	Filed: November 8, 1993
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Martin, Clay, Brevard, Highlands,)	
Collier, Pasco, Hernando, and)	
Washington Counties.)	
)	

AFFIDAVIT

Forrest L. Ludsen, Vice President of Rates and Customer Services for Southern States Utilities, Inc. ("Southern States"), submits this Affidavit in support of the "Response of Southern Utilities, Inc., to Citrus County's Motion for Reduced Interim Rates Pending Judicial Review, For Recalculated Customer Bills, Refunds and Imposition of Penalties for Violating Automatic Stay" and states the following under penalties of perjury:

1. Pursuant to Commission Order Number PSC-93-0423-FOF-WS issued on March 22, 1993, Southern States submitted tariff pages to the Commission reflecting the final rate authorized in such Order.

2. Commission Staff reviewed the tariff pages and, upon determining that the charges were consistent with the Commission's Order, approved the tariff pages and made them effective for service rendered on and after September 15th, 1993.

3. In reliance upon the Commission's Order, the Commission denial of reconsideration requests filed by parties to this docket attacking the lawfulness of the uniform rates authorized therein and the receipt of Commission authorization to implement the rates, Southern States took the following actions:


- a. modified its billing system for the one hundred twenty seven (127) systems included in this docket to provide for billing under the uniform rates;
- b. modified and implemented changes to the billing cycles to accommodate the change to monthly billing authorized in the Commissioner's Order;
- c. modified and implemented changes to meter reading schedules to accommodate the change to monthly billing;
- d. implemented changes to the billings mechanisms to reflect pro rata billing required under the Commission authorized uniform rates;
- e. began billing customers for service rendered on or after September 15th, 1993, at the uniform rates authorized in the Commissions' Order, including assessments under such rates for customers who disconnected their service on or after September 15th, 1993 to date; and
- f. other actions related to the foregoing.

4. Southern States did not know and could not foresee whether or not an appeal of the Commission's Order would be filed by any party subsequent to the implementation of the Commission authorized uniform rates.

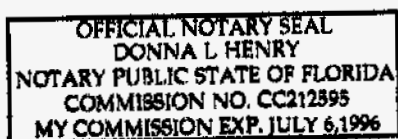
5. To my knowledge, rate subsidies exist under any utility rate structure in existence, including the interim rates previously authorized in the above referenced matter in Order Number PSC-92-0948-FOF-WS (issued December 8, 1992).

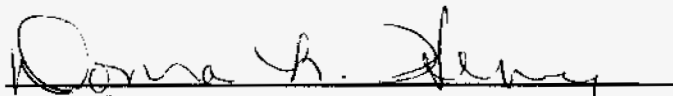
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6. It is logical to assume that there are customers served by every system included in this case who are on fixed incomes.


Forrest L. Ludsen

Sworn to and subscribed before me this 5th day of November, 1993, by Forrest L. Ludsen, who is personally known to me and did take an oath.




Donna L. Henry
Notary Public, State of Florida at Large
My Commission Expires: 7-6-96
Commission Number: CC212515

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