

RUTLEDGE, ECENIA, UNDERWOOD, PURNELL & HOFFMAN
PROFESSIONAL ASSOCIATION
ATTORNEYS AND COUNSELORS AT LAW

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STEPHEN A. ECENIA
KENNETH A. HOFFMAN
THOMAS W. KONRAD
MICHAEL G. MAIDA
J. STEPHEN MENTON
R. DAVID PRESCOTT
HAROLD F. X. PURNELL
GARY R. RUTLEDGE
R. MICHAEL UNDERWOOD
WILLIAM B. WILLINGHAM

POST OFFICE BOX 551, 32302-0551
215 SOUTH MONROE STREET, SUITE 420
TALLAHASSEE, FLORIDA 32301-1841

GOVERNMENTAL CONSULTANTS:
PATRICK R. MALOY
AMY J. YOUNG

TELEPHONE (850) 681-6788
TELECOPIER (850) 681-6515

September 11, 1997

Ms. Blanca S. Bayo, Director
Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Betty Easley Conference Center
Room 110
Tallahassee, Florida 32399-0850

HAND DELIVERY

Re: Docket No. 920199-WS

Dear Ms. Bayo:

Enclosed herewith for filing in the above-referenced docket on behalf of Florida Water Services Corporation ("Florida Water") are the following documents:

1. Original and fifteen copies of Florida Water's Motion for Reconsideration and Clarification of Order No. PSC-97-1033-PCO-WS; and
2. A disk in Word Perfect 6.0 containing a copy of the document.

ACK _____
 AFA 1
 APP 1 "filed"
 CAF _____
 CMU _____
 CTR _____
 EAG _____
 LEG 1
 LIN 5
 OPC _____
 RCH _____
 SEC 1
 WAS _____
 JTH _____

Please acknowledge receipt of these documents by stamping the extra copy of this letter and returning the same to me.

Thank you for your assistance with this filing.

Sincerely,

Kenneth A. Hoffman

KAH/rl

cc: All Parties of Record

RECEIVED & FILED

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DOCUMENT NUMBER-DATE 004307
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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)
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: September 11, 1997

FLORIDA WATER SERVICES CORPORATION'S
MOTION FOR RECONSIDERATION AND CLARIFICATION
OF ORDER NO. PSC-97-1033-PCO-WS

Florida Water Services Corporation ("Florida Water"), by and through its undersigned counsel, and pursuant to Rule 25-22.060, Florida Rules of Administrative Code, hereby requests that the Commission reconsider and clarify that portion of Order No. PSC-97-1033-PCO-WS ("Order"), addressing the Spring Hill facilities and the filing of briefs. In support of this Motion for Reconsideration and Clarification, Florida Water states as follows:

1. On August 14, 1996, the Commission entered a Final Order requiring Florida Water to implement modified stand-alone rates for the service areas at issue in this docket and further requiring Florida Water to provide refunds to customers whose rates were higher under the uniform rate structure ordered by the Commission and reversed by the First District Court of Appeal in Citrus County v. Southern States Utilities, 656 So.2d 1307 (Fla. 1st DCA 1995). The August 14, 1996 Refund Order also denied the Petition to Intervene filed by the City of Keystone Heights, the Marion Oaks

Homeowners Association and Burnt Store Marina.¹ Subsequently, in Southern States Utilities, Inc. v. Florida Public Service Commission, 22 Fla.L.Weekly D1492 (Fla. 1st DCA, June 17, 1997) ("Southern States"), the First District Court of Appeal reversed the Commission's August 14, 1996 Refund Order and remanded this docket for further proceedings.

2. Pursuant to the Order, the parties to this docket have been requested to file briefs addressing the appropriate action to be taken by the Commission in light of the Southern States decision. Possible options concerning potential refunds and/or surcharges are included in the Order, at 6. The Order required such briefs to be filed by September 30, 1997. On September 9, 1997, at its regularly scheduled Agenda Conference, the Commission voted to extend the time for filing briefs to October 7, 1997.

3. The Order notes that Florida Water implemented modified stand-alone rates for all service areas included in this docket except the Spring Hill service area. Order, at 6. Modified stand-alone rates for such service areas were implemented in January, 1996 following the granting of interim rate relief in Florida Water's most recent rate case in Docket No. 950495-WS.² Because the Commission excluded the Spring Hill service area from the Docket No. 950495-WS rate case on its own motion, modified stand-

¹See In Re: Application for rate increase by SOUTHERN STATES UTILITIES, INC., 96 F.P.S.C. 8:198 (1996).

²See In Re: Application for rate increase by Southern States Utilities, Inc., 96 F.P.S.C. 1:475 (1996).

alone rates were not implemented for the Spring Hill service in January, 1996.

4. Thus, the uniform rates remained in place for the Spring Hill service area until June 14, 1997, the effective date of the settlement between Florida Water and Hernando County concerning a pending rate case filed by Florida Water before the Hernando County Board of County Commissioners. In addressing the foregoing facts, the Commission states the following at page 7 of the Order:

As a result of these circumstances, the period of time for a refund due to the rate structure change is longer for the Spring Hill facilities than for the others. Spring Hill will be part of any decision that is ultimately made regarding refunds and surcharges up to the time modified stand-alone rates were implemented for all other FWSC facilities. However, we recognize that there is also a separate issue of the appropriate refund for this facility for the period of time since modified stand-alone rates were implemented for the other facilities. We will address the Spring Hill situation after the parties have filed briefs.

5. Florida Water requests reconsideration and clarification of the above-quoted determinations reflected in the Order. Although not specifically addressed in the Order, intervenors have filed motions requesting that Florida Water bear the cost of providing any refunds which may be ordered by the Commission to the Spring Hill customers for the period of January, 1996 through June 14, 1997. The notion that the financial burden associated with such refunds should be borne by Florida Water is absurd. As a matter of law and equity, Florida Water should not bear the cost of

any Spring Hill refunds for January, 1996 through June 14, 1997 for a number of reasons, including:

a. There was an automatic stay of the Commission's August, 1996 refund order requiring the implementation of a modified stand-alone rate structure. That automatic stay resulted from a notice of appeal filed by the City of Keystone Heights of the August, 1996 Refund Order and the automatic stay remained in effect throughout the appeal. See Fla.R.App.P. 9.310(b)(2). The automatic stay was never modified in scope. The effect of the automatic stay is to confirm that Florida Water had no choice but to charge Spring Hill customers the approved and effective tariffed uniform rates while the August, 1996 Refund Order was on appeal by Keystone Heights until either the disposition of the appeal, withdrawal of the appeal filed by Keystone Heights or modification of the automatic stay.

b. Second, the GTE Florida Inc. v. Clark,³ and Southern States decisions are clear and unequivocal in holding that principles of equity in utility ratemaking apply equally to both a utility and its customers. Florida Water did not overearn on a total company basis in 1996. Florida Water has been underearning on its Hillsborough and Polk County facilities and recently filed a rate case in Hillsborough County based on a 1996 test year. Florida Water's recent rate filing in Hernando County, which resulted in the settlement and implementation of stand-alone rates effective June 14, 1997, established that Florida Water also was

³GTE Florida Inc. v. Clark, 668 So.2d 971 (Fla. 1996).

underearning for Spring Hill in 1996 under the uniform rates. Thus, there has been no windfall to Florida Water as a result of Florida Water's lawful charging of the only rates available to it for its Spring Hill facilities through June 14, 1997.

c. Third, the "law of the case" established in the Southern States decision is that the customers who paid less under the uniform rates in effect during the appellate process should bear the cost of any Commission ordered refunds through the payment of surcharges. The court rejected the notion that Florida Water should bear the cost of any refunds which may be ordered by the Commission.

6. Despite the above compelling reasons for rejecting the assertion that Florida Water should bear the cost of any refunds ordered for the Spring Hill customers for the January, 1996 through June 14, 1997 time frame, Florida Water is concerned that the Commission has prejudged this issue by the above quoted language from page 7 of the Order. Despite the fact that the Commission has requested briefs addressing whether, inter alia, any refunds should be ordered, the Order could be construed to conclude that the Commission already has concluded, at least preliminarily, that refunds are to be made for the Spring Hill customers for the January, 1996 through June 14, 1997 time period. Further, there is no logic or rationale behind the Commission's decision to treat the Spring Hill refund/surcharge issues separately from the other issues which will be addressed in the briefs.

7. It is clear at this stage of the proceeding that there are intervenors who allege that Florida Water should bear the cost of any refunds ordered by the Commission for the Spring Hill customers the January, 1996 through June 14, 1997 time period. There is no reason to sever this issue from the remaining issues to be briefed by the parties. Nor is there any reason, and certainly none is stated in the Order, to address this issue after the parties have filed briefs. Florida Water cannot ascertain from the language in the Order whether the Commission intended to address the Spring Hill situation after the filing of the briefs or after the filing of briefs and resolution of the refund/surcharge issues affecting the remainder of the service areas in this docket. In either situation, there is simply no logic or rationale for severing the Spring Hill issues. If any refund is to be made to customers in Spring Hill, Florida Water must be compensated therefor. Basic principles of due process compel the conclusion that all parties must be granted the right to address the material facts and provide legal argument concerning the Spring Hill issues.

8. Finally, at the August 5, 1997 Agenda Conference,⁴ Florida Water argued in support of providing notices to customers of potential refunds or surcharges and the opportunity for customer input prior to the submission of briefs. See excerpt from transcript of August 5, 1997 Agenda Conference, at pp. 72-74, 81-

⁴The Order reflects the Commission's vote at the August 5, 1997 Agenda Conference on the Petition to Intervene filed by Senator Ginny Brown-Waite and Mr. Morty Miller, the filing by Florida Water of refund/surcharge information and the filing of briefs addressing the refund/surcharge issues.

82, attached hereto as Exhibit A. The Commission effectively rejected Florida Water's call for customer notices and input by requiring the submission of briefs absent such due process requirements. Order, at 6-7. On September 8, 1997, the Office of Public Counsel filed a Motion to Provide Notice to Customers mirroring the arguments made by Florida Water in support of such customer notices and the rights of all customers to be heard concerning the refund and surcharge issues in the remand stage of this proceeding.

9. Florida Water requests the Commission to reconsider this ruling. All affected customers should be apprised of the potential amount of their individual refund or surcharge and allowed the opportunity to be heard prior to the Commission's decision. Due process also requires that all parties be given the opportunity to address such customer input in their briefs addressing the refund and surcharge issues. Accordingly, Florida Water requests that the Commission reconsider the Order by:

a) requiring Florida Water to provide a notice to each current Florida Water customer whose rates were initially established pursuant to the March 22, 1993 Final Order issued in this docket⁵ of the estimated potential amount of refund or surcharge;

⁵See In Re: Application for rate increase by SOUTHERN STATES UTILITIES, INC., 93 F.P.S.C. 3:504 (1993).

b) establishing a deadline for intervention or input by such customers which deadline should be included in the notice to customers⁶; and

c) extending the time for the filing of briefs so that the briefs would be due four weeks after the above-referenced deadline for customer intervention and/or input.

WHEREFORE, for the foregoing reasons, Florida Water requests that the Commission reconsider and clarify the Order by determining or clarifying that:

a. The Commission has not made any initial or final determinations concerning whether refunds should be ordered for the Spring Hill customers for the January, 1996 through June 14, 1997 time frame;

b. The Commission has not made any initial or final determinations concerning whether customers of Florida Water should bear the cost of any such refunds;

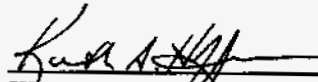
c. All parties who choose to file a brief may include arguments addressing whether refunds should be ordered for the Spring Hill customers for the January, 1996 through June 14, 1997 time period and whether the costs of any such refunds should be borne by Florida Water;

⁶Normally, a person whose substantial interests are affected by a proceeding has until 5 days prior to the final hearing to file a petition for leave to intervene. See Fla.Admin.Code R. 25-22.039. In this case, a final evidentiary hearing has not been scheduled by the Commission to address the imposition of potential refunds and/or surcharges. Thus, it is appropriate for the Commission to establish a window or deadline for intervention and/or customer input.

d. All issues concerning potential refunds for Spring Hill customers for the January, 1996 through June 14, 1997 time period and whether Florida Water should be required to bear the cost of such refunds shall be determined contemporaneously with all other refund and surcharge issues in this remand stage of this proceeding; and

e. Procedural requirements addressing the provision of individual customer notices, the opportunity for customer input and/or intervention, and the extension of time for filing briefs shall be established consistent with the request of Florida Water set forth in paragraph 9 above.

Respectfully submitted,



KENNETH A. HOFFMAN, ESQ.
RUTLEDGE, ECENIA, UNDERWOOD,
PURNELL & HOFFMAN, P.A.
P. O. Box 551
Tallahassee, FL 32302-0551
(904) 681-6788

and

BRIAN P. ARMSTRONG, ESQ.
Florida Water Services Corporation
1000 Color Place
Apopka, Florida 32703
(407) 880-0058

Attorneys for Florida Water Services
Corporation

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of Florida Water Services Motion for Reconsideration and Clarification of Order No. PSC-97-1033-PCO-WS was furnished by U. S. Mail to the following this 11th day of September, 1997:

John R. Howe, Esq.
Charles J. Beck, Esq.
Office of Public Counsel
111 West Madison Street
Room 812
Tallahassee, FL 32399-1400

Lila Jaber, Esq.
Division of Legal Services
Florida Public Service
Commission
2540 Shumard Oak Boulevard
Room 370
Tallahassee, FL 32399-0850

Ms. Anne Broadbent
President, Sugarmill Woods
Civic Association
91 Cypress Boulevard West
Homasassa, Florida 34446

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

Larry M. Haag, Esq.
County Attorney
111 West Main Street #B
Inverness, Florida 34450-4852

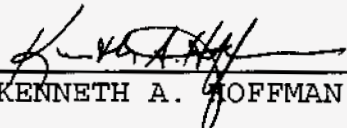
Susan W. Fox, Esq.
MacFarlane, Ferguson
P. O. Box 1531
Tampa, Florida 33601

Michael B. Twomey, Esq.
Route 28, Box 1264
Tallahassee, Florida 31310

Joseph A. McGlothlin, Esq.
Vicki Gordon Kaufman, Esq.
117 S. Gadsden Street
Tallahassee, FL 32301

Darol H.N. Carr, Esq.
David Holmes, Esq.
P. O. Drawer 159
Port Charlotte, FL 33949

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

By: 
KENNETH A. HOFFMAN, ESQ.

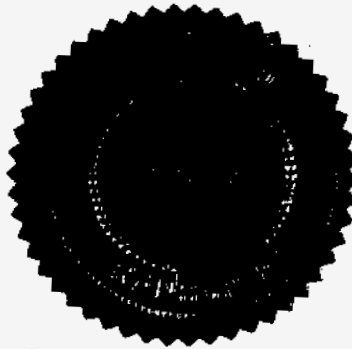
Giga.911

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION
TALLAHASSEE, FLORIDA

IN RE: Application for rate increase in Brevard,
Charlotte/Lee, Citrus, Clay, Duval, Highlands, Lake, Marion,
Martin, Nassau, Orange, Osceola, Pasco, Putnam, Seminole,
Volusia, and Washington Counties by SOUTHERN STATES
UTILITIES, INC.; Collier County by MARCO SHORES UTILITIES
(Deltona); Hernando County by SPRING HILL UTILITIES
(Deltona); and Volusia County by DELTONA LAKES UTILITIES
(Deltona).

DOCKET NO. 920199-WS

BEFORE:



CHAIRMAN JULIA A. JOHNSON
COMMISSIONER J. TERRY DEASON
COMMISSIONER SUSAN F. CLARK
COMMISSIONER DIANE K. KIESLING
COMMISSIONER JOE GARCIA

PROCEEDING:

AGENDA CONFERENCE

ITEM NUMBER:

34**

DATE:

August 5, 1997

PLACE:

4075 Esplanade Way, Room 148
Tallahassee, Florida

JANE FAUROT, RPR
P.O. BOX 10751
TALLAHASSEE, FLORIDA 32302
(904) 379-8669



6819

1 That is why we suggested that to make a decision
2 on that issue now or at the time you would consider
3 briefs without having more information regarding the
4 impact on customers would be to make a decision in a
5 vacuum. And we are pleased to see that the staff has
6 included a recommendation that the utility file that
7 type of information in time for the parties to
8 incorporate it in the briefs in this case. But by no
9 means do we believe that the opinion of the court
10 precluded the outcome suggested by the staff as one of
11 the options in Option Number 2 or 3, and we intend to
12 brief you on that subject.

13 CHAIRMAN JOHNSON: Thank you. Mr. Hoffman.

14 MR. HOFFMAN: Thank you, Madam Chairman. As we
15 said in our response to Mr. Twomey's petition, the
16 company believes that appropriate procedural
17 requirements for notice and customer intervention
18 needs to be established in this case.

19 We believe that all of the customers,
20 particularly in light of your ruling earlier today,
21 should be given notice of the possibilities which may
22 result from this proceeding, including no refunds, or
23 refunds and surcharges.

24 We have thought about this and we think that the
25 situation here is somewhat similar to what we had in

1 our last rate case where the Commission required us to
2 provide customer notices and hold a new round of
3 customer service hearings to advise customers of
4 potential rate outcomes depending on which rate
5 structure the Commission approved in our rate case.

6 In this particular instance there are a number of
7 different scenarios and rate or rate structure
8 outcomes which could result. We certainly would not
9 object to providing notices to customers and holding
10 service hearings to allow an opportunity for all of
11 the customers to be given an opportunity to air their
12 views on the structure of a refund and/or a surcharge
13 mechanism.

14 And I can tell you, Commissioners, that in light
15 of the fact that we have heard from customers today
16 who obviously support refunds, I think that it is
17 fundamentally the right of the other customers, the
18 potentially surcharged customers, to also be given
19 their right to be heard before this Commission.

20 COMMISSIONER DEASON: Isn't that what Mr.
21 McGlothlin just did? He exercised that right on
22 behalf of his clients who have intervened in this
23 case.

24 MR. HOFFMAN: Yes, sir, he did. But my point to
25 you is we have heard from other people today beyond

1 those who are technically in the case at this time,
2 and I think -- and even beyond that, Commissioner
3 Deason, I think that in a somewhat unique situation
4 such as this it would make sense to let all airs be
5 viewed by both sides.

6 You have already ruled that both sides ought to
7 be heard, and we just believe that there is some
8 consistency in doing that when you compare it to what
9 the Commission ordered us to do, albeit over our
10 objection, in the last rate case.

11 Now, I should point out, Commissioners, that we
12 are willing to provide the information that the staff
13 has requested us to provide. We anticipate that you
14 will order us to do that and we intend to do so. I
15 would point out that in --

16 COMMISSIONER CLARK: You anticipate what?

17 MR. HOFFMAN: Putting together the information on
18 the potential refunds and surcharges with or without
19 interest that Ms. Jaber went into in the very
20 beginning of this agenda, Commissioner Clark.

21 COMMISSIONER CLARK: By way of briefing it.

22 MR. HOFFMAN: No, ma'am.

23 COMMISSIONER CLARK: You are putting it out to
24 your customers?

25 MS. JABER: No, Commissioner. In the very

1 them put out notice that would incite, and I don't
2 think it's required. This is a question of law. Both
3 sides are before you -- actually there are three sides
4 before you. There is the utility, the people that Mr.
5 Jacobs and I represent, and Susan Fox, and Mr.
6 McGlothlin and his able law firm. All sides are
7 represented.

8 And we don't need the information that the
9 company wants to put out and wants to take an
10 additional 60 days to have. We have delayed enough in
11 this case.

12 The question before you, quite simply, I think,
13 is a legal one, and the decision you have to make
14 ultimately is independent of the numbers that SSU
15 would give you. Thank you.

16 MR. ARMSTRONG: Madam Chair, if I could also
17 respond briefly to the comments just made.

18 Number one, we obviously take extreme exception
19 to the comment that we would be doing anything to
20 notify customers to incite. Our notices are always
21 approved by the Commission and we would expect that
22 they would be so in this case.

23 But, in addition, the proposition that this is no
24 more than a question of law also is not an accurate
25 statement. This is no more a question of law than the

1 issue of what rate structure was appropriate during
2 our rate case. Here it is a question of design and
3 how the surcharge would be designed if there is to be
4 a surcharge.

5 Now, it is true that there are three customer
6 groups who are potentially surcharged represented by
7 counsel, but I don't believe that there has been
8 notification to the other 100 and some odd customer
9 groups potentially to be surcharged yet.

10 And as you are very well aware over the two sets
11 of service hearings that we held in each one of those
12 service areas during the rate case, we at the utility
13 are consistently held accountable for notifying
14 customers of events such as these. And we have made
15 it clear on the record that we believe that service
16 hearings would be an appropriate venue for customers
17 to come in and make the same kind of comments
18 regarding the rate design proposal in the rate case as
19 the surcharge mechanism would look like in this case.
20 That would be the focus of their testimony.

21 MS. JABER: Commissioners, may I? Let me start
22 by saying that we agree with Mr. Twomey that there is
23 no need for service hearings, and we don't need to do
24 that type of notice, and just to bring everyone back.
25 We all are in agreement, I think, that we need some