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FLORIDA PUBLIC SERVICE COMMISSION

Gerald L. Gunter Building  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850

MEMORANDUM

October 12, 1995

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING

FROM: DIVISION OF LEGAL SERVICES (PELLEGRINI) *GP*  
 DIVISION OF WATER AND WASTEWATER (WILLIS) *WJ*

RE: UTILITY: SOUTHERN STATES UTILITIES, INC.  
 DOCKET NO. 950495-WS  
 CASE: SOUTHERN STATES UTILITIES, INC. APPLICATION FOR  
 RATE INCREASE AND INCREASE IN SERVICE AVAILABILITY  
 CHARGES FOR ORANGE-OSCEOLA UTILITIES, INC. IN OSCEOLA  
 COUNTY, AND IN BRADFORD, BREVARD, CHARLOTTE, CITRUS,  
 CLAY, COLLIER, DUVAL, HERNANDO, HIGHLANDS, HILLSBOROUGH,  
 LAKE, LEE, MARION, MARTIN, NASSAU, ORANGE, OSCEOLA,  
 PASCO, POLK, PUTNAM, SEMINOLE, ST. JOHNS, ST. LUCIE,  
 VOLUSIA, AND WASHINGTON COUNTIES.  
 COUNTY: SEE ABOVE

AGENDA: OCTOBER 12, 1995 - REGULAR AGENDA - INTERESTED PERSONS  
 MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: I:\PSC\LEG\WP\950495K2.RCM

~~920799-WS~~  
 930880-WS

CASE BACKGROUND

Southern States Utilities, Inc. (SSU or utility) is a Class A utility, which provides water and wastewater service to 152 service areas in 25 counties. On June 28, 1995, SSU filed an application for approval of interim and final water and wastewater rate increases for 141 service areas in 22 counties, pursuant to Sections 367.081 and 367.082, Florida Statutes. The utility also requested an increase in service availability charges, approval of an allowance for funds used during construction and an allowance for funds prudently invested. On August 1, 1995, the Commission determined that SSU's application was deficient because it did not include information for Hernando, Hillsborough and Polk Counties in its filing. On August 2, 1995, the utility filed an amended application which included facilities in those counties to meet minimum filing requirements. That date has been established as the official date of filing.

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The Office of the Public Counsel (OPC), the Sugarmill Woods Civic Association, Inc. (Sugarmill Woods), the Spring Hill Civic Association, Inc. (Spring Hill), and the Marco Island Civic Association, Inc. (Marco Island), have intervened in this docket. The Commission has scheduled 15 customer service hearings throughout the state. Technical hearings have been scheduled for January 29-31, and February 1-2, 5, and 7-9, 1996. Special Agenda Conferences to consider SSU's revenue requirements and rates are scheduled for April 29, 1996, and May 6, 1996.

On September 13, 1995, Citrus County, Sugarmill Woods, and Spring Hill (petitioners) filed a Verified Petition to Disqualify or, in the Alternative, to Abstain (petition), together with affidavits. The petitioners moved Commissioner Diane K. Kiesling to disqualify herself from this docket; from Docket No. 920199-WS, 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); and from Docket No. 930880-WS, In Re: Investigation into the Appropriate Rate Structure for Southern States utilities, Inc., for All Regulated Systems in Bradford, Brevard, Citrus, Clay, Collier, Duval, Hernando, Highlands, Lake, Lee/Charlotte, Marion, Martin, Nassau, Orange, Osceola, Pasco, Putnam, Seminole, St. Lucie, Volusia, and Washington Counties. Commissioner Kiesling is the Prehearing Officer in this docket.

On March 7, 1995, Commissioner Kiesling appeared before the Senate Commerce Committee and offered testimony in behalf of the Commission on Senate Bill 298, sponsored by Senator Ginny Brown-Waite, District 10. Michael B. Twomey, counsel for petitioners in the aforementioned dockets, followed Commissioner Kiesling before the committee. Senate Bill No. 298 was a bill to be entitled "An act relating to water and wastewater utility rates; amending s. 367.081, F.S.; prohibiting the Florida Public Service Commission from including in a utility customer's rates or charges certain expenses or returns on investments related to certain property ....."

On September 20, 1995, SSU filed its Memorandum in Opposition to Verified Petition to Disqualify or in the Alternative, to Abstain. By Order No. PSC-95-1199-PCO-WS, Order Declining to

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Withdraw from Proceeding, issued on September 25, 1995, Commissioner Kiesling declined to withdraw from the aforementioned three dockets.

Commissioner Kiesling's Order, Order Declining to Withdraw from Proceeding, is attached hereto as Appendix A. The petition of Citrus County, Sugarmill Woods, and Spring Hill, Verified Petition to Disqualify or, in the Alternative, to Abstain, is attached hereto as Appendix B. SSU's Memorandum in Opposition to Verified Petition to Disqualify or in the Alternative, to Abstain is attached hereto as Appendix C. This recommendation addresses the appropriate action for the Commission to take as the result of Commissioner Kiesling's declining to withdraw.

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DISCUSSION OF ISSUES

**ISSUE 1:** Should the Commission rule upon the disqualification of Commissioner Diane K. Kiesling in Dockets Nos. 920199-WS, 930880-WS, and 950495-WS?

**RECOMMENDATION:** Yes. A quorum of the full Commission, absent the affected commissioner, is required by rule to decide the issue of disqualification, if the commissioner declines to disqualify herself. (PELLEGRINI)

**STAFF ANALYSIS:** As stated in the Case Background, Citrus County, Sugarmill Woods, and Spring Hill filed a petition to disqualify Commissioner Kiesling from further participation in Dockets Nos. 920199-WS, 930880-WS and 950495-WS. By Order No. PSC-95-1199-PCO-WS, Commissioner Kiesling declined to withdraw from any of the proceedings.

Rule 25-21.004(1), Florida Administrative Code, provides that:

A commissioner may be disqualified from hearing or deciding any matter where it can be shown that the commissioner has a bias or a prejudice for or against any party to the proceeding or a financial interest in the outcome.

Furthermore, Rule 25-21.004(3), Florida Administrative Code, provides that:

where the commissioner declines to withdraw from the proceeding, a majority vote of a quorum of the full commission, absent the affected commissioner, shall decide the issue of disqualification.

Staff believes the rule requires the full Commission's determination of the issue of disqualification without the need for any type of further implementation action, such as a motion for review or reconsideration by the petitioners. In other words, appeal to the full Commission, absent the challenged commissioner, is self-executing. In contrast, Rule 25-22.038, Florida Administrative Code, provides that "[a] party who is adversely affected by [an order of the prehearing officer] may seek reconsideration by the prehearing officer, or review by the Commission panel ... by filing a motion in support ... within ten days of service of the ... order." This rule sets forth the

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recourse generally available to the parties with respect to orders of the prehearing officer. However, Rule 25-21.004, Florida Administrative Code, is controlling in the specific context of a petition seeking the prehearing officer's disqualification. Therefore, staff recommends that the Commission decide the matter of Commissioner Kiesling's disqualification in Dockets Nos. 920199-WS, 930880-WS, and 950495-WS.

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**ISSUE 2:** How should the Commission decide the matter of Commissioner Kiesling's disqualification in Dockets Nos. 920199-WS, 930880-WS, and 950495-WS?

**RECOMMENDATION:** The Commission should decide against Commissioner Kiesling's disqualification. (PELLEGRINI)

**STAFF ANALYSIS:** The standard for disqualification is set forth in Section 120.71, Florida Statutes. The statute provides that:

any individual serving alone or with others as an agency head may be disqualified from serving in an agency proceeding for bias, prejudice, or interest when any party to the agency proceeding shows just cause by a suggestion filed within a reasonable period of time prior to the agency proceeding.

Furthermore, as already noted, Rule 25-21.004(1), Florida Administrative Code, requires a commissioner's self-disqualification upon a showing of bias, prejudice or financial interest. Moreover by the provisions of Sections 350.041 and 350.05, Florida Statutes, a commissioner is required to carry out her duties in a professional, independent, objective, and nonpartisan manner, and to abide by the standards of conduct of Chapters 112 and 350, Florida Statutes.

Position of Citrus County, Sugarmill Woods, and Spring Hill

Petitioners set forth two grounds for Commissioner Kiesling's disqualification in Dockets Nos. 920199-WS, 930880-WS, and 950495-WS. First, petitioners allege that Commissioner Kiesling's testimony before the Commerce Committee of the Florida Senate on Senate Bill 298 was "impermissible political activity and political comment." Senate Bill 298 contained provisions that would have required the setting of water and wastewater rates on the basis of system-specific plant in service and cost of service. Petitioners further allege that Commissioner Kiesling supported the position of SSU in opposing the bill, thereby destroying her impartiality on issues of uniform rates.

Second, petitioners allege that, following the committee hearing, which considered Senate Bill 298, Commissioner Kiesling "loud[ly] and public[ly] reprimand[ed] and threatened" Mr. Twomey, who had also testified on the bill. Petitioners allege that Commissioner Kiesling was angered by Mr. Twomey's characterization to the committee of her testimony. As a result, Mr. Twomey

questions the ability of his clients (the petitioners herein) to receive a fair and impartial hearing before Commissioner Kiesling on any matter related to either the uniform rate structure or SSU.

Petitioners rely upon Chapter 112, Part III, Code of Ethics for Public Officers and Employees, Florida Statutes, Chapter 350, Florida Statutes, Section 120.71, Florida Statutes, Rule 25-21.004, Florida Administrative Code, as well as canons of the Florida Code of Judicial Conduct (Code), particularly Canon 1, *A Judge Shall Uphold the Integrity and Independence of the Judiciary*; Canon 2, *A Judge Shall Avoid Impropriety and the Appearance of Impropriety in All of the Judge's Activities*; and Canon 3, *A Judge Shall Perform the Duties of Judicial Office Impartially and Diligently*.

Petitioners further rely on the holding in *City of Tallahassee v. FPSC*, 441 So.2d 620 (Fla. 1983), that "[t]he standard to be used in disqualifying an individual serving as an agency head is the same standard used in disqualifying a judge." Moreover, petitioners assert that "[i]n considering a motion to disqualify[,] the judge is limited to the bare determination of legal sufficiency and may not pass on the truth of the facts alleged," *Bundy v. Rudd*, 366 So.2d 440, 442 (Fla. 1978), and that "the test for legal sufficiency is whether the facts would prompt a reasonably prudent person to fear that he could not get a fair and impartial trial," *Hayslip v. Douglas*, 400 So.2d 553, 556 (Fla. 1st DCA 1982). The court, in *Bundy v. Rudd*, *supra*, concluded that "[w]hen a judge has looked beyond the mere legal sufficiency of a suggestion of prejudice and attempted to refute the charges of partiality, he has then exceeded the proper scope of his inquiry and on that basis alone established grounds for his disqualification." *Id.* at 442. What is necessary to prevent, the court admonished, is an intolerable adversary atmosphere between the trial judge and the litigant. *Id.*

Concluding that the integrity of the Commission's decisions in the three dockets would be undermined should Commissioner Kiesling participate in them, petitioners request that she disqualify herself from further proceedings in these dockets, or, should she decline to disqualify herself, that the Commission, absent Commissioner Kiesling, disqualify her pursuant to Section 120.71, Florida Statutes, and Rule 25-21.004, Florida Administrative Code.

Position of Southern States Utilities, Inc.

In its opposition to the petition, SSU characterizes the petition as "an abusive litigation tactic employed ... for the

purpose of gaining ... advantage." According to SSU, Commissioner Kiesling testified on Senate Bill 298 on behalf of the Commission, and "attempted to present as much information as possible concerning uniform rate structures, offered the Commission's position that the bill would eliminate one of many ratemaking tools historically used by the Commission, and repeatedly emphasized that the Commission is taking no position on the bill."

In addition, SSU maintains that petitioners' grounds for requesting Commissioner Kiesling's disqualification are alleged violations of the Code of Judicial Conduct, and that the Code is not applicable to agency heads. SSU notes that in the revision of the Code effective January 1, 1995, 643 So.2d 1037 (Fla. 1994), *Application of the Code of Judicial Conduct* reads:

This Code applies to justices of the Supreme Court and judges of the District Courts of Appeal, Circuit Courts, and County Courts.

Anyone, whether or not a lawyer, who performs judicial functions, including but not limited to a magistrate, court commissioner, special master, general master, domestic relations commissioner, child support hearing officer, or judge of compensation claims, shall while performing judicial functions, conform with Canons 1, 2A, and 3, and such other provisions of this Code that might reasonably be applicable depending on the nature of the judicial function performed.

The utility further points out that petitioners rely on the superseded statement of the Code effective September 30, 1973, 281 So.2d 21 (Fla. 1973).

Next, SSU asserts that petitioners rely erroneously on *City of Tallahassee v. FPSC, supra*, in advancing as the standard applicable to Commissioner Kiesling, as an agency head, the same standard to be used in disqualifying a judge. SSU offers that the correct, and more stringent, standard to be applied to agency heads is enunciated in *Bay Bank & Trust Co. v. Lewis*, 634 So.2d 672 (Fla. 1st DCA 1994). Construing Section 120.71, Florida Statutes, as last amended, the court stated that:

The 1983 Florida Legislature deleted the phrase "or other causes for which a judge may be recused" from section 120.71, Florida Statutes, so we must assume that the statute was intended to have a different meaning

after its amendment. (citation omitted) Thus, while a moving party may still disqualify an agency head upon a proper showing of "just cause" under section 120.71, the standards for disqualifying an agency head differ from the standards for disqualifying a judge. This change gives recognition to the fact that agency heads have significantly different functions and duties than do judges. Were we to give section 120.71 the same meaning as that given it in *City of Tallahassee v. Florida Public Service Commission*, the 1983 amendment to section 120.71 would serve no purpose whatsoever.

*Id.* at 633-34. Petitioners in *Bay Bank & Trust Co. v. Lewis, supra*, failed to establish "just cause" in alleging that the commencement of regulatory proceedings against them was vindictive, and linked to their ceasing campaign support. Similarly, SSU contends, petitioners, in alleging Commissioner Kiesling to be biased in favor of the utility and of uniform rates and to be prejudiced against Mr. Twomey, fail to establish just cause for Commissioner Kiesling's disqualification. SSU characterizes Mr. Twomey's testimony before the Commerce Committee as provocative, and Commissioner Kiesling's reaction, therefore, defensible. For support, SSU cites *State ex rel Fuente v. Himes*, 36 So.2d 433 (Fla. 1948) (lawyer cannot deliberately provoke an incident rendering the court disqualified), and *Oates v. State*, 619 So. 2d 23 (Fla 4th DCA 1993) (judge justified in publicly stating criminal defendant was being an obstinate jerk).

Order No. PSC-95-1199-PCO-WS

As earlier noted, Commissioner Kiesling, in Order No. PSC-95-1199-PCO-WS, declined to withdraw from the proceeding. She concluded that "[a]pplying applicable standards, the petition is conclusory, untimely and is not legally sufficient to support disqualification." Commissioner Kiesling determined the applicable standards to be Section 120.71, Florida Statutes, as construed in *Bay Bank & Trust Co. v. Lewis, supra*; Rule 25-21.004, Florida Administrative Code; and Sections 350.041(2)(g) and 350.05 Florida Statutes. She found, therefore, that neither the limitation applicable to a judge to the bare determination of the legal sufficiency of a disqualification motion nor the prohibition against passing on the truth of the facts alleged applied in her consideration of the disqualification petition.

Commissioner Kiesling described her testimony on Senate Bill 298 before the Commerce Committee as "demonstrably aimed at the administration of justice in the context of the Commission's economic regulation of water resources." The testimony did not, she asserts, "speak at all to the application or non-application of uniform rates to any specific ratepayers or to litigation concerning any ratepayers." She contends that to consider her testimony to be just cause for disqualification would be to preclude commissioners from responding to the invitation of legislators to address matters affecting the regulation of public utilities, a result inimical to the administration of justice.

Recognizing the "strained relations" case law in extra-judicial occurrences requiring disqualification, e.g., *McDermott v. Grossman*, 429 So.2d 393 (Fla 3d DCA 1983) and *Town Center of Islamorada, Inc. v. Overby*, 592 So.2d 774 (Fla. 3d DCA 1992), Commissioner Kiesling concluded that her encounter with Mr. Twomey following the committee hearing was distinguishable on the grounds that Mr. Twomey recklessly impugned her integrity in his testimony, in contravention of Rule 4-8.2, Rules Regulating The Florida Bar. She notes that the supreme court, in re: *Shimek*, 284 So.2d 686 (Fla. 1973), observed that:

while a lawyer as a citizen has a right to criticize [a judge] publicly, he should be certain of the merit of his complaint, use appropriate language, and avoid petty criticisms, for unrestrained and intemperate statements tend to lessen public confidence in our legal system.

*Id.* at 688-89. She contends that her remonstrance cannot give rise to a charge of prejudice, and that it was proper "given [Mr. Twomey's] misconduct."

Finally, Commissioner Kiesling, in reliance upon Section 120.71, Florida Statutes, requiring that a petition for disqualification be filed within a reasonable time prior to the proceeding, concludes that the petition is untimely in respect to Dockets Nos. 920199-WS and 930880-WS, having been brought subsequent to final hearing. Moreover, she concludes that it is untimely in respect to Docket No. 950495-WS, because it is brought, without justification, at an advanced stage in the proceedings and would have, therefore, a significantly disruptive effect upon the Commission's ratemaking process, endangering the integrity of its outcome.

Staff

First, staff believes that the court's holding in *Bay Bank & Trust Co. v. Lewis, supra*, correctly construes Section 120.71, Florida Statutes, in setting forth a more stringent disqualification standard applicable to agency heads, than to judges. The 1983 amendment of Section 120.71, Florida Statutes, renders, the holding in *City of Tallahassee v. FPSC, supra*, inapposite. Staff would note that the holding of *Bundy v. Rudd, supra*, still states the law with respect to a motion for the disqualification of a trial judge, i.e., a judge presented with a motion for his disqualification shall not pass on the truth of the facts alleged nor adjudicate the question of disqualification, but shall limit his inquiry to the legal sufficiency of the motion. See, e.g., *Time-Warner Entertainment Co., L.P. v. Baker*, 647 So.2d 1070 (Fla 5th DCA 1994); *Mitchell v. State*, 642 So.2d 1108 (Fla. 4th DCA 1994); *Dura-Stress, Inc. v. Law*, 634 So.2d (Fla. 5th DCA 1994). The court in *Bay Bank & Trust Co. v. Lewis, supra*, did not elucidate the difference in standards. No other court has thus far construed Section 120.71, Florida Statutes, as amended in 1983.

However, staff believes that the provision of Section 120.71, Florida Statutes, permitting a party to disqualify an agency head upon a proper showing of just cause, means, under *Bay Bank & Trust Co. v. Lewis, supra*, that the challenged agency head is permitted to pass on the truth of the party's allegations. The applicable test for legal sufficiency for recusal in any event is enunciated in *Hayslip v. Douglas*, 400 So.2d 553, 556 (Fla. 1st DCA 1982), i.e., whether the facts alleged would prompt a reasonably prudent person to fear that he could not get a fair and impartial trial. Thus, staff believes Commissioner Kiesling appropriately relies on the *Bay Bank & Trust Co. v. Lewis, supra*, holding, applying to the petition for her disqualification a standard more stringent than a "bare determination of legal sufficiency," and responding to the factual basis for the grounds for disqualification the petitioners advance.

Furthermore, staff believes that petitioners improperly bring their petition pursuant to Rule 1.432, Florida Rules of Civil Procedure, *Disqualification of Judge*, and Section 38.10, Florida Statutes. Rule 1.432, Florida Rules of Civil Procedure, was repealed effective January 1, 1993, 609 So.2d 465 (Fla. 1992), and replaced by Rule 2.160, Florida Rules of Judicial Administration, *Disqualification of Trial Judges*. In any case, by its terms, its application is limited to county and circuit judges. Similarly,

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Section 38.10, Florida Statutes, *Disqualification of judge for prejudice; application; affidavits; etc.*, applies only to the judges of this state.

Finally, staff believes that the case law suggests that Commissioner Kiesling's conclusion that petitioners may not prevail because they untimely filed the petition seeking her disqualification may be mistaken. In *Bay Bank & Trust v. Lewis, supra*, the court was unwilling to reach the conclusion that the motion for disqualification was untimely. *Id.* at 678. The court noted that there is no statutory or rule definition of "agency proceeding" for purposes of Section 120.71, Florida Statutes. *Id.* Commissioner Kiesling posits, with respect to Dockets Nos. 920199-WS and 930880-WS, that for present purposes "agency proceeding" means final hearing. The court in *Bay Bank & Trust v. Lewis, supra*, refused to accept respondents' similar contention that an "agency proceeding" commenced upon the filing of the petition for a Section 120.57, Florida Statutes, evidentiary hearing. *Id.*

Commissioner Kiesling's contention that her disqualification in Docket No. 950495-WS would be unnecessarily and significantly disruptive of the Commission's decision-making process with the proceeding at an advanced stage is no more persuasive. It does not appear to staff that petitioners have laid back in this proceeding, awaiting an advantageous moment. Giving consideration to all of the circumstances of recent months, staff does not believe that it follows necessarily that petitioners bypassed earlier opportunities to file a petition seeking Commissioner Kiesling's disqualification. As noted in the Case Background, technical hearings are scheduled for January 29-31, and February 1-2, 5, and 7-9, 1996. The Commission will consider SSU's revenue requirements and rates at special Agenda Conferences, April 29, 1996, and May 6, 1996. Moreover, staff does not believe that at this stage in Docket No. 950495-WS a finding of untimeliness would have sufficient force to trump a finding of bias, prejudice, or interest. The legal sufficiency of the petition seeking Commissioner Kiesling's disqualification can and should be decided on other grounds.

The opinion of the court in *United States v. Morgan*, 313 U.S. 409, 85 L. Ed. 1429 (1940), is an appropriate basis for the Commission's determination of whether petitioners have shown just cause for Commissioner Kiesling's disqualification as to their first grounds. The Secretary of Agriculture wrote a letter to the *New York Times* in which he vigorously criticized the decision of the district court to return impounded funds to Kansas City

Stockyards market agencies. The impounded funds were those charged by the market agencies in excess of maximum rates set by the Secretary. The market agencies moved to disqualify the Secretary from proceedings reopened by him to fix reasonable rates during the impounding period. The court held:

That he not merely held but expressed strong views on matters believed by him to have been in issue, did not unfit him for exercising his duty in subsequent proceedings ordered by this Court ... Cabinet officers charged by Congress with adjudicatory functions are not assumed to be flabby creatures any more than judges are. Both may have an underlying philosophy in approaching a specific case. But both are assumed to be men of conscience and intellectual discipline, capable of judging a particular controversy fairly on the basis of its own circumstances.

*Id.* at 421.

In *Re Area Rate Proceeding, supra*, the Federal Power Commission concluded that it would not be a violation of procedural due process for a judge to sit in on a case after he had expressed an opinion as to whether certain types of conduct were prohibited by law. *Id.* at 62. Accordingly, the Commission found that:

[E]ven if this were an adjudicatory proceeding in which the issue presented was whether the respondents had violated some provision of the law which would require the imposition of sanctions, a commissioner's prior expression of his views on a general question of fact, policy, or law which might be involved in the determination ... would not disqualify him from further participation. Similarly expression of opposition to the respondents' efforts to change the law would not show disqualifying personal bias. *A fortiori*, in a rate-making proceeding like the present one, which Congress has recognized as an essentially legislative function and, as such, part of our rule-making activities, an expression of views on a general question which may be in issue in the proceeding or opposition to amendatory legislation could not be disqualifying.

*Id.* The Commission further found that:

In administrative agencies where commissioners are selected for their expertise, or their ability to acquire expertise with experience, it would be most surprising if a commissioner did not develop opinions on the major issues confronting his agency ....

The public interest would hardly be served if the commission could be silenced on the question of whether its work is necessary and important merely by the regulated industry raising a related question as an issue in a proceeding before the commission. The commission is not merely determining the private rights of litigants but is charged with protecting the overall public interest. It has a duty and obligation to inform the Congress and the general public of its programs and policies ....

There is also a basic difference between an informed mind and a closed one. An opinion is not a prejudice or a prejudgment, at least when held by someone required and accustomed to hold all opinions subject to confirmation or rejection in light of the proof. Ignorance of the problems involved in the regulatory process or lack of views thereon is not the touchstone to effective and impartial exercise of regulatory judgment. The regulatory process assumes that intelligent and fair decisions will be reached by the commissioners because of their familiarity with the special field in which they operate and not despite it.

*Id.* at 62-63. See also, *Federal Trade Comm'n v. Cement Inst.*, 333 U.S. 683, 702, 92 L.Ed. 1010, 1035, reh. den. 334 U.S. 839, 92 L.Ed. 1764 (1947) (mere formation and expression of opinion does not disqualify administrative officer from passing on merits of the case).

In an unpublished opinion, the Colorado Supreme Court held that the fact that a member of the state public utilities commission had issued a statement in an affidavit that ratepayers would be harmed by the transfer of telephone directory publishing assets did not prejudice a subsequent decision by the commission denying authority for the transfer, where there was no showing that

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the challenged commissioner was incapable of judging the controversy on the merits. *Mountain Tel. & Tel. Co. v. CPUC*, 98 PUR4th 534, 763 P.2d 1020 (1980).

Furthermore, in *Re Arkla, Inc.*, 111 PUR4th 151, the Arkansas Public Service Commission, rejecting allegations of impartiality as insufficient to warrant disqualification of its chairman, held that:

A decision maker has an obligation not to recuse without valid reasons ... The Commission finds that neither the statements made by the Chairman before the Joint Interim committee or his past employment as legal counsel for the Governor warrant his recusal in this matter. A Commissioner has a policy making role as well as a judicial one. A Commissioner's expertise and insight are lost to the collective decision making process if he or she recuses.

*Id.* at 159.

Finally, Canon 4C of the Code of Judicial Conduct permits a judge to appear at a public hearing before, or otherwise consult with, an executive or legislative body or official on matters concerning the law, the legal system or the administration of justice. Giving effect to the second provision of the Application of the Code of Judicial Conduct<sup>1</sup> (quoted in full above), Staff believes the Code is applicable to agency heads.

Thus, staff believes that Commissioner Kiesling's testimony before the Senate Commerce Committee was fully consistent with her obligations to discharge her policy making responsibility. The thrust of her testimony is captured in the following excerpts:

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<sup>1</sup>The September 30, 1973 version of the Code provided, in *Compliance With the Code of Judicial Conduct*, that:

Anyone, whether or not a lawyer, who is an officer of a judicial system performing judicial functions, including an officer such as a referee in bankruptcy, special master, court commissioner, or magistrate, is a judge for the purpose of this Code.

Staff believes that under both this and the current version of the Code, the Code is meant to apply to agency heads.

Kiesling: We would urge you not to take away one tool in our tool chest that allows us as economic regulators to deal with the significant water problems that are coming.

\* \* \*

Unidentified: So, in other words, unified rates is the commission policy where the commission thinks it's a good policy, and is not their policy where they don't think it's a good policy.

Kiesling: That's right. It's one form of ratemaking that we view as part of our arsenal.

Order at 6. There is nothing to suggest that Commissioner Kiesling's testimony, vigorous as it may have been, should be characterized as having escaped from the boundaries of the administration of justice, as petitioners contend. Accordingly, staff recommends that the Commission find that Commissioner Kiesling's testimony cannot be the basis for her disqualification in the aforementioned dockets.

As to petitioners' second grounds for disqualification, their fears that they will not receive a fair and impartial hearing before Commissioner Kiesling as a result of her exchange of words with Mr. Twomey following the committee hearing, staff does not find sufficient representation in the petition to believe the exchange can be construed as evidence of prejudice to the interests of the petitioners before the Commission. Staff accepts Commissioner Kiesling's contention that she took sharp objection to portions of Mr. Twomey's testimony because they struck her as impugning her integrity. Staff believes that Commissioner Kiesling's conduct was prompted by the transitory passion of the circumstances. Petitioners do not allege facts that would cause a reasonable person to believe her conduct rather was prompted by prejudice or that it caused her to harbor a present bias or prejudice.<sup>2</sup> Staff would note that in *Brown v. St. George Island*,

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<sup>2</sup>In the Commentary to Canon 2A of the Code, it is said that:

A judge must avoid all impropriety and appearance of impropriety. A judge must expect to be the subject of constant public scrutiny. A judge must therefore accept restrictions on the judge's conduct that might be viewed as burdensome by the ordinary citizen and

*Ltd.*, 561 So.2d 253 (Fla. 1990), the court upheld, under the first part of Section 38.10, Florida Statutes, the disqualification of a judge who had made derogatory remarks concerning a litigant's veracity. The court concurred that the holding in *Deauville Realty Co. v. Tobin*, 120 So.2d 198 (Fla. 3d DCA 1960), *cert. den.*, 127 So.2d 678 (Fla. 1961), that a statement by a judge that he feels a party has lied in a case generally indicates a bias against the party, controlled the case. Citing *Hayslip v. Douglas*, *supra*, the court found that the movant had a well-founded fear he will not receive a fair trial.

In the instant case, under the standard of *Bay Bank & Trust Co. v. Lewis*, *supra*, staff does not believe that Commissioner Kiesling's public rebuke of Mr. Twomey must be viewed as a fatal indictment of Mr. Twomey's character. Petitioners, in their second ground for disqualification, allege that Commissioner Kiesling's "public display of anger directed at [petitioners'] attorney directly violated the provisions of Canon [3B(4)]." Canon 3B(4) provides that "[a] judge shall be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom the judge deals in an official capacity." Rather, it would seem best viewed as a rather normal reaction to Mr. Twomey's particular statements that attacked what Mr. Twomey apparently perceived to be "gaps" in Commissioner Kiesling's testimony. Those statements, the statements with which Commissioner Kiesling presumably took issue, would appear to some to strain the Florida Bar's *Rules of Professional Conduct*. Staff is mindful of numerous provocations of similar tenor made by Mr. Twomey in the course of the proceedings in question here. However, in fairness, Mr. Twomey's remarks before the Senate committee would appear to others to be vigorous advocacy. Staff would draw the line only with great difficulty. Nevertheless, as Justice Frankfurter suggests in *Morgan*, *supra*, agency heads are no more "flabby creatures" than are judges. Staff does not believe that Commissioner Kiesling's conduct can be interpreted to be a violation of Canon 3B(4) prejudicial to the petitioners' interests. Accordingly, staff recommends that the Commission find Commissioner Kiesling's exchange of words with Mr. Twomey following the March 7, 1995, Senate Commerce Committee hearing on Senate Bill 298 cannot be the basis for her disqualification in the aforementioned dockets.

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should do so freely and willingly.

DOCKET NO. 950495-WS  
OCTOBER 12, 1995

In summary, staff believes that Commissioner Kiesling correctly declined to recuse herself from Dockets Nos. 920199-WS, 930880-WS, and 950495-WS, petitioners' having failed in their burden to make a proper showing of just cause, pursuant to Section 120.71, Florida Statutes. Commissioner Kiesling's appearance before the Senate Commerce Committee on March 7, 1995, was consistent with Canon 4C of the Code of Judicial Conduct. Commissioner Kiesling's confrontation with Mr. Twomey following the committee hearing would not prompt a reasonably prudent person to fear that he could not get a fair and impartial trial and was not a prejudicial violation of Canon 3B(4) of the Code. Therefore, staff recommends that the Commission, sitting in the absence of Commissioner Kiesling, decide against Commissioner Kiesling's disqualification from further participation in Docket Nos. 920199-WS, 930880-WS, and 950495-WS.

DOCKET NO. 950495-WS  
OCTOBER 12, 1995

**ISSUE 3:** Should this docket be closed?

**RECOMMENDATION:** No. (PELLEGRINI)

**STAFF ANALYSIS:** This docket should remain open for the purposes of completing the rate case. The matters in issue in this recommendation are procedural and are not in any way dispositive of this docket.

ORIGINAL  
FILE COPY

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

In re: Investigation Into the )  
Appropriate Rate Structure for )  
SOUTHERN STATES UTILITIES, INC. )  
for all Regulated Systems in )  
Bradford, Brevard, Citrus, Clay )  
Collier, Duval, Hernando, )  
Highlands, Lake, Lee/Charlotte, )  
Marion, Martin, Nassau, Orange, )  
Pasco, Putnam, Seminole, St. )  
Johns, St. Lucie, Volusia, and )  
Washington Counties. )

DOCKET NO. 930880-WS

Application for rate increase for Orange- )  
Osceola Utilities, Inc. in Osceola County, )  
and in Bradford, Brevard, Charlotte, Citrus, Clay, )  
Collier, Duval, Highlands, Lake, Lee, Marion, )  
Martin, Nassau, Orange, Osceola, Pasco, Putnam, )  
Seminole, St. Johns, St. Lucie, Volusia, and )  
Washington Counties, by Southern States )  
Utilities, Inc. )

DOCKET NO. 950495-WS  
FILED: Sept. 12, 1995

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VERIFIED PETITION TO DISQUALIFY OR,  
IN THE ALTERNATIVE, TO ABSTAIN

Citrus County, as a party to Docket No. 920199-WS, the Sugarmill Woods Civic

Association, Inc., as a party to Docket Nos. 920199-WS and 950495-WS, and the Spring Hill

*[Handwritten signatures and stamps]*

DOCKETED DATE: 08990 SEP 15 95  
FACILITY: 002778

Civic Association, Inc., as a party to Docket Nos. 930880-WS and 950495-WS, by and through their undersigned counsel, move to disqualify Public Service Commissioner Diane K. Kiesling from proceeding further in the above-described matters, pursuant to Fla.R.Civ.P. 1.432, Section 38.10, Florida Statutes, and Rule 25-21.004, Florida Administrative Code, and as grounds, state:

1. The Sugarmill Woods Civic Association, Inc. and the Spring Hill Civic Association, Inc. (collectively referred to as "the Associations") fear that Commissioner Kiesling will not hear proceedings in the above-described dockets with an open mind. The Associations fear that Commissioner Kiesling is biased in favor of Southern States Utilities, Inc. ("SSU") in all three dockets ("SSU") and that she is biased in favor of the uniform rate structure SSU is seeking to have sustained in Docket No. 920199-WS and imposed in Docket No. 950495-WS. The Associations fear that Commissioner Kiesling has demonstrated her bias publicly by engaging in inappropriate political activity promoting the uniform rate structure to SSU's advantage and the Associations' disadvantage, while two of the above-styled dockets were either still pending at the Public Service Commission ("PSC") or on judicial review. Lastly, the Associations fear that Commissioner Kiesling cannot participate in any of the above-styled dockets with an open mind and in a fair and impartial manner because she has publicly reproached and berated the Associations' counsel, Michael B. Twomey, in a manner clearly evidencing contempt, disdain, impatience and a lack of courtesy to said counsel and in a manner demonstrating an unprofessional and total lack of judicial temperament on the part of the commissioner.

**JUDICIAL STANDARDS**

2. In establishing a Code of Ethics for Public Officers and Employees, the Florida Legislature has stated that it "is essential to the proper conduct and operation of government that

public officials be independent and impartial . . ." See Section 112.311(1), Florida Statutes. The Legislature further states "that public officers . . . are agents of the people and hold their positions for the benefit of the public. . . . Such officers and employees are bound to observe, in their official acts, the highest standards of ethics consistent with this Code [Code of Ethics] . . . regardless of personal considerations, recognizing that promoting the public interest and maintaining the respect of the people in their government must be of foremost concern." Section 112.311(6), Florida Statutes.

3. Public Service Commissioners are bound by the standards of conduct contained in Chapter 350, Florida Statutes. Those standards state that a commissioner may not conduct himself in an unprofessional manner at any time during the performance of his official duties. Section 350.041(2)(g), Florida Statutes. Moreover, the oath of office of a Public Service Commissioner requires commissioners to faithfully perform their duties independently, objectively and in a nonpartisan manner. See Section 350.05, Florida Statutes.

4. Public Service Commissioners are also bound, as "agency heads", by the provisions of Section 120.71, Florida Statutes, which states, in relevant part:

**120.71 Disqualification of agency personnel.—**

(1) Notwithstanding the provisions of s. 112.3143, any individual serving alone or with others as an agency head may be disqualified from serving in an agency proceeding for bias, prejudice, or interest when any party to the agency proceeding shows just cause by a suggestion filed within a reasonable period of time prior to the agency proceeding.

5. Rules of the Florida Public Service Commission, Rule 25-21.004, Florida Administrative Code, provides that a commissioner may be disqualified from hearing or deciding

any matter where it can be shown that the commissioner has a bias or prejudice for or against any party to the proceeding or a financial interest in its outcome.

6. The Supreme Court of Florida adopted the "Code of Judicial Conduct." It provides the following:

Anyone, whether or not a lawyer, who is an officer of a judicial system performing judicial functions, including an officer such as a referee in bankruptcy, special master, court commissioner, or magistrate, is a judge for the purpose of this code.

Code of Judicial Conduct, "Compliance with the Code of Judicial Conduct."

Canon 1 of the Judicial Code states that an independent and honorable judiciary is indispensable to justice in our society and provides that a judge observe high standards of conduct so that the integrity and independence of the judiciary may be preserved.

Canon 2(A) provides that a judge should respect and comply with the law and conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

Canon 2(B) states that a judge should not allow his personal relationships to influence his judicial conduct or judgment, should not lend the prestige of his office to advance the private interests of others, and should not voluntarily testify as a character witness.<sup>1</sup>

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<sup>1</sup> The Commentary to this Canon states:

Public confidence in the judiciary is eroded by irresponsible or improper conduct by judges. A judge must avoid all impropriety and appearance of impropriety. He must expect to be the subject of constant public scrutiny. He must therefore accept restrictions on

Canon 3(A)(1) states that a judge "should be unswayed by partisan interests, public clamor, or fear of criticism."

Canon 3(A)(3) provides that a "judge should be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom he deals in his official capacity . . . ."

Canon 3(A)(4) states that a "judge should . . . neither initiate nor consider ex parte or other communications concerning a pending or impending proceeding.

Canon 3(A)(6) directs that:

(6) A judge should abstain from public comment about a pending or impending proceeding in any court, and should require similar abstention on the part of court personnel subject to his direction and control. This subsection does not prohibit judges from making public statements in the course of their official duties or from explaining for public information the procedures of the court.

Canon 3(C)(1) addresses the disqualification of judges and provides:

(1) A judge should disqualify himself in a proceeding in which his impartiality might reasonably be questioned, including but not limited to instances where:

(a) he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;

(b) he served as a lawyer in the matter in

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his conduct that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly.

The testimony of a judge as a character witness injects the prestige of his office into the proceeding in which he testifies and may be misunderstood to be an official testimonial. This canon, however, does not afford him a privilege against testifying in response to an official summons.

controversy, . . . or the judge or such lawyer has  
been a material witness concerning it;

Canon 4 provides that:

A judge, subject to the proper performance of his judicial duties, may engage in the following quasi-judicial activities, if in doing so he does not cast doubt on his capacity to decide impartially any issue that may come before him:

B. He may appear at a public hearing before an executive or legislative body or official on matters concerning the law, the legal system, and the administration of justice, and he may otherwise consult with an executive or legislative body or official, but only on matters concerning the administration of justice.

Canon 7 states that a judge should refrain from political activity inappropriate to his judicial office and specifically states:

4. A judge should not engage in any other political activity except on behalf of measures to improve the law, the legal system, or the administration of justice.

#### LEGAL STANDARDS FOR DISQUALIFICATION

7. The Supreme Court of Florida has held:

Prejudice of a judge is a delicate question to raise, but when raised as a bar to the trial of a cause, if predicated on grounds with a modicum of reason, the judge against whom raised should be prompt to recuse himself. No judge under any circumstances is warranted in sitting in the trial of a cause whose neutrality is shadowed or even questioned.

Dickenson v. Parks, 140 So. 459, 462 (1932). (Emphasis supplied.)

8. In considering a motion to disqualify the judge is limited to the bare determination of legal sufficiency and may not pass on the truth of the facts alleged. Bundy v. Rudd, 366 So.2d 440 (Fla. 1978). The test for legal sufficiency is whether the facts alleged would prompt a reasonably prudent person to fear that he could not get a fair and impartial trial. A party need not

have personal knowledge of the facts set forth in the motion. Hayslip v. Douglas, 400 So.2d 553 (Fla. 1st DCA 1982).

9. Every litigant is entitled to nothing less than the cold neutrality of an impartial judge. State ex rel. Davis v. Parks, 194 So. 613 (1939).

10. The procedures and standards for disqualification of a judge apply to deputy commissioners for workers' compensation. Hewitt v. Hurl, 411 So.2d 266 (Fla. 1st DCA 1982). More specifically, the Supreme Court of Florida in City of Tallahassee v. Florida Public Service Commission, 441 So.2d 620 (1983) found that:

[t]he standard to be used in disqualifying an individual serving as an agency head is the same as the standard used in disqualifying a judge. S. 120.71, Fla.Stat. (1981).

The Associations submit that these standards, including the interpretive case law, must likewise apply to Public Service Commissioners sitting in a judicial or quasi-judicial capacity and as implicitly contemplated by virtue of the language chosen in Rule 25-21.004, Florida Administrative Code.<sup>2</sup>

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<sup>2</sup> 25-21.004 Disqualification.

(1) A commissioner may be disqualified from hearing or deciding any matter where it can be shown that the commissioner has a bias or a prejudice for or against any party to the proceeding or a financial interest in its outcome.

(3) A petition for disqualification of a commissioner shall state the grounds for disqualification and shall allege facts supportive of those grounds. The petition shall be filed with the Division of Records and Reporting, and where the commissioner declines to withdraw from the proceeding, a majority vote of a quorum of the full commission, absent the affected commissioner, shall decide the issue of disqualification.

FACTS

11. The facts relied on by the Associations for disqualification include, but are not limited to, the following:

A. As reflected in the attached sworn affidavits of Senator Ginny Brown-Waite, Jim Desjardin, and Michael B. Twomey, Senate Bill 298, sponsored by Senator Brown-Waite, was heard by the Commerce Committee of the Florida Senate on March 7, 1995. SB 298, a copy of which is attached, prohibited any water or sewer customer whose rates were set by the PSC from including a return on investment related to plant, other than common plant, not providing service to that customer. Likewise, SB 298 prohibited the inclusion of operating expenses in a customer's rates, where the expenses, except in the case of common expenses, were not directly necessary to the provision of that customer's water or sewer service. In short, Senator Brown-Waite's bill would have prohibited "uniform rates" of the type imposed by the PSC in Docket No. 920199-WS, which case was then pending appeal in the First District Court of Appeals.

B. As reflected in the attached affidavits, Senator Brown-Waite testified before the Commerce Committee in support of her bill. Likewise, Jim Desjardin, a resident of Sugarmill Woods, past president of the associations and current member of its utility committee, at the invitation of Senator Brown-Waite, testified in support of the bill. As noted earlier, the Sugarmill Woods Civic Association, Inc. is a party to Docket Nos. 920199-WS and 950495-WS. Michael B. Twomey, the undersigned, as attorney to the Spring Hill Civic Association, Inc. and the

Sugarmill Woods Civic Association, Inc., also testified in support of SB 298 at the invitation of Senator Brown-Waite.

C. Also present at the Commerce Committee meeting on March 7, 1995 were Commissioner Diane K. Kiesling and numerous Florida Public Service Commission staff members. Despite her summary statement that she was neutral on the bill, the clear and obvious thrust of Commissioner Kiesling's testimony was that she, and the entire PSC by implication, were adverse to the Senator Brown-Waite's bill and the elimination of uniform rates as a "tool" they could use. There was no reservation on the part of Senator Brown-Waite, Jim Desjardin or Mike Twomey that Commissioner Kiesling wanted SB 298 "killed" in committee.

D. Immediately following the consideration of SB 298, Commissioner Kiesling summoned Mike Twomey to her side in the crowded elevator lobby of the Senate Office Building and, in the presence of some 50 to 80 persons, including Senator Brown-Waite and several of his consumer clients, began to loudly and publicly accuse him of calling her a "liar" on several occasions during his committee testimony on SB 298. In an extremely loud and shrill voice and with the attention of everyone in the room, Commissioner Kiesling berated Mike Twomey for calling her a "liar" and publicly threatened to "get him" with "every legal means at her disposal" if the alleged behavior occurred again. Mike Twomey denies that he ever has called Commissioner Kiesling a liar, let alone during the Commerce Committee meeting. Rather, he believes he was, as he was professionally required to, only vigorously representing the interests of his clients before the legislative

committee and doing so, not only at the request of his clients, but also at the request of their state senator as well.

E. As a consequence of the public rebuke by Commissioner Kiesling, Mike Twomey felt humiliated and embarrassed and questions the ability of his clients (the Associations) to receive a fair and impartial hearing before Commissioner Kiesling on any matter related to either the uniform rate structure or SSU, an adverse party, whose case she seemed to have been pleading before the Senate Commerce Committee on March 7, 1995.

F. Jim Desjardin, as a customer of SSU and a member of the Sugarmill Woods Civic Association, Inc., fears that he and his Association cannot receive a fair and impartial hearing on uniform rates from Commissioner Kiesling, who elected to publicly take the side of the utility before the legislature on an issue that was contested by the Sugarmill Woods Civic Association, Inc. at the PSC, the legislature, and the First District Court of Appeals.

G. Senator Ginny Brown-Waite, who is a customer of SSU and the state senator to some 25,000 customers served by SSU from the Spring Hill systems, fears that both she and her constituents cannot receive a fair and impartial hearing from Commissioner Kiesling because the commissioner improperly interposed herself on one side of a political issue still pending before the PSC and the courts and because she so aggressively publicly attacked Mike Twomey in a manner that was discourteous, rude, impatient and undignified, and clearly unprovoked. Senator Brown-Waite fears that Commissioner Kiesling's testimony and attack on

Mike Twomey demonstrate a clear partisan view toward SSU and the uniform rates the utility is supporting in Docket No. 920199-WS and requesting in Docket No. 950495-WS. She believes Commissioner Kiesling's attack demonstrates a clear bias against Michael B. Twomey that will serve to the detriment of his clients and her constituents.

GROUND FOR DISQUALIFICATION

12. Commissioner Kiesling's unsolicited testimony seeking the defeat of Senator Ginny Brown-Waite's SB 298 destroyed any notion of her impartiality as a commissioner on the issue of uniform rates. Her testimony, which directly opposed the interests of the Associations' members as expressed by their elected state representative, their utility committee member and attorney, supported the position being taken by Southern States Utilities, Inc. Her public opposition to Senator Brown-Waite's bill was impermissible political activity and political comment "about a pending or impending proceeding before any court" and was in the nature of testifying as a character witness on behalf of the uniform rate structure concept. She was clearly engaging in consulting with a legislative body, but on matters that clearly could not be characterized as "only . . . concerning the administration of justice. As such, Commissioner Kiesling's unsolicited testimony before the Florida Senate Commerce Committee clearly and unambiguously constituted "political activity inappropriate to [her] judicial office." Her passionate defense of the uniform rate structure, which has since been stricken by the First District Court of Appeals, leaves the painfully clear impression that the Associations' litigants will get far more "than the cold neutrality of an impartial judge." Commissioner Kiesling's actions in testifying against Senator Brown-Waite's bill leave the Associations with the fear that she is biased and partial and that they cannot,

and likely will not, receive a fair and impartial hearing from her. Consequently, she should either disqualify herself from these proceedings or, failing that, be removed by the other commissioners.

13. Commissioner Kiesling's unwarranted and unprovoked March 7, 1995 public attack on the Associations' attorney Mike Twomey causes the Associations further concern, fear and apprehension that they cannot receive a fair and impartial hearing from Commissioner Kiesling. While his defense of the Associations' interest before the legislative committee may have been critical of the PSC, they were not a direct attack on Commissioner Kiesling. However, even if they were a direct reproach of Commissioner Kiesling, her loud and public reprimand of Mike Twomey before dozens of citizens, including at least one state senator and several of his clients, demonstrated an unprofessional and unreasonable "fear of criticism" and constituted "irresponsible or improper conduct" by a judge. As such, her public display of anger directed at the Associations' attorney directly violated the provisions of Canon 3(A)(3) <sup>3(B)(4)</sup> requiring that a "judge should be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom he deals in his official capacity." The Associations believe and fear that Commissioner Kiesling's open attack on their attorney reveals a "personal bias or prejudice" on her part against their counsel, and ultimately them, that might reasonably call into question her impartiality. Consequently, she should either disqualify herself from these proceedings or, failing that, be removed by the other commissioners.

#### CONCLUSION

14. The above facts create concern for the integrity and impartiality of the Public Service Commission's decision process in Docket Nos. 920199-WS, 930880-WS, and 950495-WS should Commissioner Kiesling participate in them. Such concerns undermine the public's and

the Associations' confidence in the regulatory process and cannot be allowed. The prejudice or fear of prejudice on the part of Commissioner Kiesling has been raised and raised with more than a "modicum of reason." Commissioner Kiesling's neutrality in these matters has been questioned and has been shadowed and she, under no circumstances is warranted in sitting in the trial of these causes. She should be prompt to recuse herself.

WHEREFORE, Citrus County, the Sugarmill Woods Civic Association, Inc. and the Spring Hill Civic Association, Inc. respectfully move Commissioner Diane K. Kiesling to disqualify herself from the three above-described dockets. Alternatively, failing Commissioner Kiesling's own disqualification, the Associations would respectfully request that the remaining full Commission remove her pursuant to the provisions of Section 120.71, Florida Statutes, and Rule 25-21.004, Florida Administrative Code.

Respectfully submitted,

  
Michael B. Tworney  
Attorney for the Sugarmill Woods Civic  
Association, Inc. and the Spring Hill Civic  
Association, Inc., and Citrus County

(904) 421-9530

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and accurate copy of the foregoing has been furnished by

U.S. Mail, postage prepaid, this 12<sup>th</sup> day of Oct, 1995 to the following persons:

Brian Armstrong, Esquire  
General Counsel  
Southern States Utilities, Inc.  
1000 Color Place  
Apopka, Florida 32703

20 North Main Street, Suite 460  
Brooksville, Florida 32601

Kenneth A. Hoffman, Esquire  
Rutledge, Ecenia, Underwood,  
Purnell & Hoffman, P.A.  
Post Office Box 551  
Tallahassee, Florida 32302

Lila A. Jaber, Esquire  
Division of Legal Services  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0862

Harold McLean, Esquire  
Associate Public Counsel  
Office of the Public Counsel  
c/o The Florida Legislature  
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Tallahassee, Florida 32399-1400

Larry M. Haag, Esquire  
County Attorney Citrus County  
107 North Park Avenue, Suite 8  
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Christiana T. Moore, Esquire  
Associate General Counsel  
Florida Public Service Commission  
101 East Gaines Street  
Tallahassee, Florida 32399-0850

Bruce Snow, Esquire  
County Attorney  
Hernando County

  
Attorney

SEP-12-1995 10:28 FROM

TO

85044218543 P.21

FLORIDA' EMATE - 1995  
BY SENATOR BROOKS-WALTE

SA 298

10-258-95

1 A bill to be entitled  
2 An act relating to water and wastewater utility  
3 rates; amending s. 367.06, F.S.; prohibiting  
4 the Florida Public Service Commission from  
5 including in a utility customer's rates or  
6 charges certain expenses or returns on  
7 investments related to certain property;  
8 providing an effective date.  
9  
10 Be It Enacted by the Legislature of the State of Florida:  
11  
12 Section 1. Paragraph (a) of subsection (2) of section  
13 367.06, Florida Statutes, 1994 Supplement, is amended to  
14 read:  
15 367.061 Rates; procedure for fixing and changing.--  
16 (2)(a) The commission shall, either upon request or  
17 upon its own motion, fix rates ~~that~~ which are just,  
18 reasonable, compensatory, and not unfairly discriminatory. In  
19 every ~~rate-fixing~~ rate-fixing such proceeding, the commission shall  
20 consider the value and quality of the service and the cost of  
21 providing the service, which must ~~shall~~ include, but is ~~is~~ not be  
22 limited to, debt interest; the requirements of the utility for  
23 working capital; maintenance, depreciation, tax, and operating  
24 expenses incurred in the operation of all property used and  
25 useful in the public service; and a fair return on the  
26 investment of the utility in property used and useful in the  
27 public service. The commission may not include in a  
28 customer's rates or charges any operating expenses incurred in  
29 the operation of any property that is part of a water or  
30 wastewater system that is not interconnected with a system  
31 providing utility service to that customer or a portion of

CODING: Words stricken are deletions; words underlined are additions.

FLORIDA SENATE - 1995  
10-258-95

SB 296

1 investment in property that is part of a water or wastewater  
 2 system that is not interconnected with the system providing  
 3 utility service to that customer, notwithstanding any common  
 4 ownership of the non-interconnected system. *However, the*  
 5 *commission may* ~~shall~~ not allow the inclusion of contributions-  
 6 in-aid-of-construction in the rate base of any utility during  
 7 a rate proceeding; and accumulated depreciation on such  
 8 contributions-in-aid-of-construction *may* ~~shall~~ not be used to  
 9 reduce the rate base. *nor may* ~~shall~~ depreciation on such  
 10 contributed assets be considered a cost of providing utility  
 11 service. The commission shall also consider the investment of  
 12 the utility in land acquired or facilities constructed or to  
 13 be constructed in the public interest within a reasonable time  
 14 in the future, not to exceed, unless extended by the  
 15 commission, 24 months from the end of the historical test  
 16 period used to set final rates.

Section 2. This act shall take effect July 1, 1995.

\*\*\*\*\*

SENATE SUMMARY

Prohibits the Florida Public Service Commission from including in a water or wastewater utility customer's rates or charges any operating expenses incurred in the operation of, or a return on investment in, property that is a part of a water or wastewater system that is not interconnected with the system providing utility service to the customer.

**AFFIDAVIT FOR VERIFICATION OF DISQUALIFICATION**

State of Florida  
County of Leon

**BEFORE ME**, the undersigned authority, personally appeared Jim Desjardin, who after being first duly sworn, deposes and says according to his personal knowledge as follows:

I am Jim Desjardin, of 14 Balsam Court West, Homosassa, Florida, 34446. I am a member of the Sugarmill Woods Civic Association, Inc., a past president of the association and a member of its Utility Committee. I reside in Sugarmill Woods and am a water and sewer customer of Southern States Utilities, Inc.'s ("SSU") Sugarmill Woods water and sewer operations. The Sugarmill Woods Civic Association, Inc. is a party to Florida Public Service Commission Docket Nos. 920199-WS, 930880-WS and 950495-WS. These dockets directly or implicitly involve SSU's approval to charge its customers, including those of us at Sugarmill Woods, the so-called "uniform rate" structure. The uniform rate structure is a simple cost and rate averaging methodology that charges customers of non-interconnected and geographically dispersed water and sewer systems identical water and/or sewer rates without any regard for the costs associated with serving them. The concept requires SSU's customers at Sugarmill Woods to pay annual subsidies, exceeding the costs of our service, of over \$600,000. A uniform rate structure was imposed on 127 SSU water and sewer systems in Docket No. 920199-WS over the objections of the Sugarmill Woods Civic Association, Inc. We appealed the final PSC order approving uniform rates to the First District Court of Appeals and oral arguments were heard by that Court on January 10, 1995.

On March 7, 1995, at the request of the Associations and at the invitation of Senator Ginny Brown-Waite, I spoke in favor of Senate Bill 298 before the Florida Senate Commerce Committee. Senate Bill 298 effectively proscribed the uniform rate concept by prohibiting the PSC from

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including in any customer's water or sewer rates costs, other than allocated "common costs" that were not directly related to, or necessary to, the utility service being provided to that customer. Senator Brown-Waite addressed the Committee and introduced her bill. I spoke in favor of the bill, reciting how uniform rates unfairly forced me and my neighbors, most of whom are either retirees or low-income young families, to pay large subsidies to support the utility services SSU is providing to distant systems.

Commissioner Diane Kiesling addressed the Committee and spoke forcefully against Senator Brown-Waite's bill and in favor of the uniform rate structure. She dismissed my concerns and spoke on the necessity of retaining uniform rates as a means to achieving affordable rates and for financing large capital construction projects without imposing rate shock on the customers.

Mike Twomey, our attorney in Docket No. 950495-WS and an attorney representing the Citrus County Board of County Commissioners in Docket No. 920199-WS, followed Commissioner Kiesling and spoke in favor of Senator Brown-Waite's bill. He stated that the uniform rate concept unfairly forced a portion of SSU's customers to subsidize the utility services of other SSU customers and that such a practice was unconstitutional, illegal, and resulted in undue rate discrimination.

Immediately following the presentation of Senate Bill 298 my wife and I went upstairs to Senator Brown-Waite's office. When Senator Brown-Waite and Mike Twomey arrived a discussion ensued regarding Commissioner Kiesling publicly accusing Mike Twomey of calling her a liar during the committee meeting. and several Associations members waiting to catch an elevator when Commissioner Kiesling loudly called ~~me~~<sup>MIKE</sup> to her side. I did not personally witness <sup>10</sup> the Commissioner Kiesling accusing Mike Twomey of calling her a liar, but, if it is true that she did, I have great concerns and reservations that I and the Sugarmill Woods Civic Association, Inc.

will be able to receive a fair and impartial hearing before Commissioner Kiesling while we are represented by Mike Twomey in Docket No. 950495-WS.

I am equally fearful and have grave reservations regarding Commissioner Kiesling's impartiality on the issue of uniform rates. The Sugarmill Woods Civic Association, Inc. has obtained a reversal of the PSC's final order imposing uniform rates in Docket No. 920199-WS, but the PSC will soon consider how to comply with the Court's mandate in that case. The PSC staff has recommended that the record be reopened and that SSU be allowed to present new evidence that will allow for the retroactive approval of the existing uniform rates until they were initially imposed in September, 1993. Given Commissioner Kiesling's forceful and unqualified support for uniform rates before the Senate Commerce Committee, I am fearful that she cannot approach the current staff recommendation in Docket No. 920199-WS with an open mind and afford my neighbors and I a fair and impartial hearing. Likewise, I am fearful that Commissioner Kiesling's public and political support for uniform rates will preclude us receiving a fair and impartial hearing in Docket No. 950495-WS in which SSU has again sought uniform rates notwithstanding the First District Court of Appeals reversal of that rate structure in Docket No. 920199-WS.

FURTHER, AFFLIANT SAYETH NAUGHT.

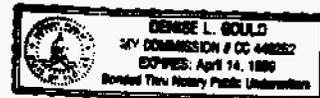
  
Jim Desjardin

Sworn to and subscribed before me this 12 day of September, 1995, by Jim Desjardin, who is    personally known to me, or  by identification, and did take an oath.

DL# 026345625 176

  
Notary Public, State of Florida at Large  
My Commission Expires:

3



002796 3131

**AFFIDAVIT FOR VERIFICATION OF DISQUALIFICATION**

State of Florida  
County of Leon

**BEFORE ME**, the undersigned authority, personally appeared Michael B. Twomey, who after being first duly sworn, deposes and says according to his personal knowledge as follows:

I am Michael B. Twomey of Route 28, Box 1264, Tallahassee, Florida 32310. I am an attorney licensed to practice in the State of Florida and am the attorney of record to the Sugarmill Woods Civic Association, Inc. and the Spring Hill Civic Association, Inc. ("the Associations") in one or more of the following matters before the Florida Public Service Commission: Docket Nos. 920199-WS, 930880-WS, and 950495-WS. Each of these dockets directly involves Southern States Utilities, Inc. ("SSU"), the water and sewer utility serving the members of the Associations, and either directly or implicitly involves the issue of imposing a so-called "uniform rate" structure on SSU's customers, including the members of the Associations. The uniform rate structure is a simple cost and rate averaging methodology that charges customers of non-interconnected and geographically dispersed water and sewer systems identical water and/or sewer rates without any regard for the costs associated with serving them. The concept inherently requires some SSU customers, including the members of the Associations, to subsidize the utility services of other SSU customers at levels that are unduly discriminatory. A uniform rate structure was imposed on 127 SSU water and sewer systems in Docket No. 920199-WS over the objections of the Associations and with the concurrence of SSU. The PSC final order was appealed to the First District Court of Appeals and oral arguments were heard by the Court on January 10, 1995.

On March 7, 1995, at the request of the Associations and at the invitation of Senator Ginny Brown-Waite, I spoke in favor of Senate Bill 298 before the Florida Senate Commerce Committee. Senate Bill 298 effectively proscribed the uniform rate concept by prohibiting the PSC from

including in any customer's water or sewer rates costs, other than allocated "common costs" that were not directly related to, or necessary to, the utility service being provided to that customer. Senator Brown-Waite addressed the Committee and introduced her bill. Jim Desjardin, a past President of the Sugarmill Woods Civic Association, Inc. and a member of its Utility Committee, spoke in favor of the bill, reciting how uniform rates unfairly forced he and his neighbors, most of whom were either retirees or low-income young families, to pay large subsidies to support the utility services SSU was providing to distant systems.

Commissioner Diane Kiesling addressed the Committee and spoke forcefully against Senator Brown-Waite's bill and for the retention of the uniform rate structure as a necessary tool for the PSC to have available. She spoke at some length and in such a forceful manner that she clearly annoyed some members of the Committee.

I followed Commissioner Kiesling and spoke in favor of the bill. I stated that the uniform rate concept unfairly forced a portion of SSU's customers to subsidize the utility services of other SSU customers and that such a practice was unconstitutional, illegal, and resulted in undue rate discrimination.

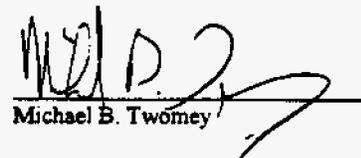
Immediately following the presentation of Senate Bill 298, I was standing with Senator Brown-Waite and several Associations members waiting to catch an elevator when Commissioner Kiesling loudly called me to her side. When I joined her, she stated in an extremely loud voice that I had "three times called her a liar" and that "she would use every legal means available to her to stop me if I called her a liar again." I denied having called her a liar and a short discussion ensued. By this time, the level of Commissioner Kiesling's voice, her tone and the nature of her accusations had caught the attention of virtually everyone of the dozens of people in the Senate Office Building first floor elevator lobby. After a brief exchange in which I protested my

innocence of her charges, Commissioner Kiesling and her entourage of staff persons departed.

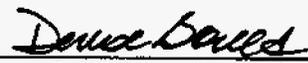
I was clearly shaken, embarrassed and humiliated by the experience. Normally reasonably "quick on my feet", I was rendered virtually speechless by what I considered a rude, discourteous, and thoroughly unprovoked public attack by Commissioner Kiesling. I felt the need to defend myself to both Senator Brown-Waite and my clients, who, fortunately, also expressed shock and outrage at Commissioner Kiesling's conduct.

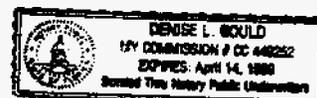
Since that incident, I have questioned and continue to question Commissioner Kiesling's impartiality on the issue of uniform rates, which remains a hotly contested and critical issue in all of SSU's pending and impending rate cases. I have concluded that she is not, and cannot be, impartial on an issue she so forcefully spoke in favor of before the Senate Commerce Committee. Furthermore, I fear that the unprovoked public attack on me on March 7, 1995 by Commissioner Kiesling reveals a strong bias against either me, my clients, or both, that will preclude my clients receiving a fair and impartial hearing before Commissioner Kiesling in Docket Nos. 920199-WS, 930880-WS and 950495-WS.

FURTHER, AFFIANT SAYETH NAUGHT.

  
Michael B. Twomey

Sworn to and subscribed before me this 12 day of September, 1995, by Michael B. Twomey, who is  personally known to me, or  by identification, and did take an oath.

  
Notary Public, State of Florida at Large  
My Commission Expires:



002799<sup>3134</sup>

**AFFIDAVIT FOR VERIFICATION OF DISQUALIFICATION**

State of Florida  
County of Leon

BEFORE ME, the undersigned authority, personally appeared Ginny Brown-Waite, who after being first duly sworn, deposes and says according to her personal knowledge as follows:

I am Senator Ginny Brown-Waite, Senator, 10th District, The Florida Senate, 20 North Main Street, Room 200, Brooksville, Florida 34601. My constituents include the residents of the Spring Hill community, all of whom are served by Southern States Utilities, Inc. ("SSU"). I own property in Spring Hill, my tenants are customers of SSU, and I remain a member of the Spring Hill Civic Association, Inc.

During the 1995 legislative session, I filed Senate Bill 298 for the purpose of stopping the PSC from charging any customers rate subsidies to support utility services that were being provided to other distant customers at non-interconnected water and sewer systems owned by SSU. On March 7, 1995, Senate Bill 298 was considered before the Senate Commerce Committee. I introduced the bill and spoke in favor of its adoption. At my request Jim Desjardin of the Sugarmill Woods Civic Association, Inc. and Michael B. Twomey, a private attorney representing Citrus County, the Sugarmill Woods Civic Association, Inc. and the Spring Hill Civic Association, Inc. in several PSC dockets concerning SSU and the uniform rates, attended the Committee meeting and spoke in favor of my bill.

PSC Commissioner Diane Kiesling also addressed the Committee and spoke forcefully against my bill and in favor of the uniform rate structure. She dismissed my concerns and those of my constituents regarding the unfairness of uniform rates and spoke on the necessity of retaining uniform rates as a means to achieving affordable rates and for financing large capital construction projects without imposing rate shock on the customers. I had not solicited Commissioner

Kiesling's attendance or comments at the Committee meeting and am not aware that any other Senator invited her to speak on the bill. She was clearly against my bill, for uniform rates, and lent both the prestige and apparent expertise of herself and the PSC to the effort of killing my bill.

Immediately following the presentation of Senate Bill 298, Mike Twomey, several of my constituents and I were waiting to get an elevator to go to my office when Commissioner Kiesling called Mike Twomey over in a loud voice and began rudely chastising him for calling her a liar during the Committee meeting. Commissioner Kiesling stuck her finger in Mike Twomey's face, and that, combined with her volume, tone of voice and the shrill nature of her accusations caught the attention of virtually everyone in that part of the building and quickly made her confrontation with Twomey the center and only attraction. Her accusations were unprofessional of any lawyer, let alone one charged with being an agency head. Furthermore, her accusations that Twomey had called her a liar during the Committee meeting were completely unfounded. Twomey was, in my opinion, merely making a strong case for the elimination of the uniform rate concept and in that regard was vigorously representing the interests of his clients and my constituents.

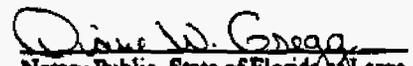
I have great concerns and reservations that I and my constituents will be able to receive a fair and impartial hearing before Commissioner Kiesling while we are represented by Mike Twomey in Docket No. 950495-WS. I am equally fearful and have grave reservations regarding Commissioner Kiesling's apparent lack of impartiality on the issue of uniform rates. The Sugarmill Woods Civic Association, Inc. and Citrus County have obtained a reversal of the PSC's final order imposing uniform rates in Docket No. 920199-WS, and the PSC will soon consider how to comply with the Court's mandate in that case. The PSC staff has recommended that the record of that case be reopened and that SSU be allowed to present new evidence that will allow for the retroactive approval of the existing uniform rates until they were initially imposed in

September, 1993. Given Commissioner Kiesling's forceful and unqualified support for uniform rates before the Senate Commerce Committee, I am fearful that she cannot approach the current staff recommendation in Docket No. 920199-WS with an open mind and, thereby, afford my constituents and I a fair and impartial hearing. Likewise, I am fearful that Commissioner Kiesling's public and political support for uniform rates will preclude us from receiving a fair and impartial hearing in Docket No. 950495-WS, in which SSU has again sought uniform rates notwithstanding the First District Court of Appeals' reversal of that rate structure in Docket No. 920199-WS.

FURTHER, AFFIANT SAYETH NAUGHT.

  
Ginny Brown-Waite

Sworn to and subscribed before me this 12<sup>th</sup> day of September, 1995, by Ginny Brown-Waite, who is  personally known to me, or  by identification, and did take an oath.

  
Notary Public, State of Florida (Large)  
My Commission Expires:



DIANE W. GREGG  
MY COMMISSION # CC375313 EXPIRES  
June 29, 1998  
BACKED THROUGH THE FAN INSURANCE, INC.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application of )  
Southern States Utilities, )  
Inc. and Deltona Utilities, ) Docket No. 920199-WS  
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. )  
\_\_\_\_\_ )

In re: Investigation into the )  
appropriate rate structure for )  
SOUTHERN STATES UTILITIES, INC. ) Docket No. 930880-WS  
for all regulated systems in )  
in Bradford, Brevard, Citrus, Clay, )  
Collier, Duval, Hernando, )  
Highlands, Lake, Lee/Charlotte, )  
Marion, Martin, Nassau, Orange, )  
Pasco, Putnam, Seminole, St. Johns, )  
St. Lucie, Volusia, and Washington )  
Counties. )  
\_\_\_\_\_ )

In re: Application for rate )  
increase for Orange-Osceola )  
Utilities, Inc. in Osceola )  
County, and in Bradford, )  
Brevard, Charlotte, Citrus, )  
Clay, Collier, Duval, ) Docket No. 950495-WS  
Highlands, Lake, Lee, Marion, )  
Martin, Nassau, Orange, ) Filed: September 20, 1995  
Osceola, Pasco, Putnam, )  
Seminole, St. Johns, St. )  
Lucie, Volusia, and )  
Washington Counties by )  
Southern States Utilities, )  
Inc. )  
\_\_\_\_\_ )

**SOUTHERN STATES UTILITIES, INC.'S MEMORANDUM  
IN OPPOSITION TO VERIFIED PETITION TO  
DISQUALIFY OR IN THE ALTERNATIVE, TO ABSTAIN**

Southern States Utilities, Inc. ("SSU"), by and through its  
undersigned counsel, hereby files its Memorandum in Opposition to

the Verified Petition to Disqualify or, in the Alternative, to Abstain ("Petition") filed by Citrus County, as a party to Docket No. 920199-WS, the Sugarmill Woods Civic Association, Inc. ("Sugarmill Civic"), as a party to Docket Nos. 920199-WS and 950495-WS, and the Spring Hill Civic Association, Inc. ("Spring Hill Civic"), as a party to Docket Nos. 930880-WS and 950495-WS, all of whom are hereinafter referred to collectively as the "Petitioners."

**I. INTRODUCTION**

1. The Petition to Disqualify Commissioner Diane K. Kiesling from proceeding further in the above-described dockets is nothing more than an abusive litigation tactic employed by the Petitioners for the purpose of gaining a perceived advantage through the removal of Commissioner Kiesling. From a factual standpoint, the Petition suffers from insufficient verified facts necessary to establish "just cause" to disqualify Commissioner Kiesling. Worse, the Petition is based on repeated mischaracterizations of fact. The legal grounds purporting to support the Petition consist of, in large part, a repealed Code of Judicial Conduct, a repealed rule of civil procedure and inapplicable case law. Pursuant to the procedures set forth in Rule 25-21.004, Florida Administrative Code, Commissioner Kiesling should decline to withdraw from the above-captioned proceedings and the full Commission, apart from Commissioner Kiesling, should deny the Petition.

II. THE PETITION IS PREMISED ON MISCHARACTERIZATIONS OF FACT

2. The material facts purporting to support the Petition are set forth in Affidavits filed by Michael B. Twomey, the attorney for the Petitioners; Jim Desjardin, a member of Sugarmill Civic; and Senator Ginny Brown-Waite, a member of Spring Hill Civic. At the root of the dispute are comments made by Commissioner Kiesling and Mr. Twomey on Senate Bill 298 before the Senate Commerce Committee on March 7, 1995, as well as remarks allegedly made by Commissioner Kiesling to Mr. Twomey following the Committee's consideration of the bill.<sup>1</sup> On page 2 of Mr. Twomey's Affidavit, he states that Commissioner Kiesling "... spoke forcefully against Senator Brown-Waite's bill and for the retention of the uniform rate structure as a necessary tool for the PSC to have available." SSU has filed two tapes prepared by or on behalf of the Senate Commerce Committee containing the comments and discussion before the Committee on Senate Bill 298. The tapes are filed with the original of this Memorandum in an envelope labeled Exhibit "A". The tapes reflect that Commissioner Kiesling made the following material points during her presentation:

- a. that her presentation was being made on behalf of the Florida Public Service Commission, not Commissioner Kiesling individually;
- b. that the Commission had no position, pro or con, on the

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<sup>1</sup>SSU has no knowledge of and, therefore, has no basis to refute Mr. Twomey's version of what transpired between he and Commissioner Kiesling following the Committee's consideration of SB 298 per Mr. Twomey's affidavit.

bill;

c. that the bill would eliminate one tool the PSC has, one part of its ratemaking arsenal, in developing rate structure for utilities;

d. that Commissioner Kiesling was not asking the Committee to "bless" the Commission's position as Petitioners suggest, but was only trying to give the Committee information concerning the impact of SB 298 on the Commission in its position as economic regulators if the authority to order a uniform rate structure was eliminated; and

e. Commissioner Kiesling also discussed the disadvantages and advantages of single tariff pricing (uniform rates).

3. As reflected by the tapes, Mr. Twomey followed Commissioner Kiesling with his presentation. Mr. Twomey stated that Hernando County wanted no part of the Commission's "regulatory socialism." Mr. Twomey challenged the veracity of Commissioner Kiesling's statement that the bill would prohibit uniform rates by arguing that the bill does not even mention uniform rates -- a specious argument which ignored the intent and effect of the bill. Mr. Twomey went on to state that the Commission and the utility had used a "scare tactic" by pointing to the \$150.00 per month bill which would result for SSU's Gospel Island customers. Mr. Twomey then stated:

The \$150.00 scare tactic; it's dishonest; it's not true. You shouldn't be sucked in by it.

Finally, Mr. Twomey referred to Commissioner Kiesling's discussion of the uniform rate investigation in Docket No. 930880-

WS and stated that Commissioner Kiesling failed to tell the Committee that the Commission refused to hear legal issues concerning SSU's uniform rate.

4. The tapes of the Senate Commerce Committee's consideration of Senate Bill 298 reveal that Commissioner Kiesling attempted to present as much information as possible concerning uniform rate structures, offered the Commission's position that the bill would eliminate one of many ratemaking tools historically used by the Commission, and repeatedly emphasized that the Commission is taking no position on the bill. Mr. Twomey, on the other hand, repeatedly accused Commissioner Kiesling of not providing all information on the issues that she raised and expressly accused the Commission of engaging in a dishonest scare tactic.

5. According to the affidavits of Mr. Twomey and Senator Brown-Waite, following the Committee's consideration of Senate Bill 298, Commissioner Kiesling chastised Mr. Twomey for calling her a liar during the Committee meeting. Mr. Twomey's affidavit also states that Commissioner Kiesling said that "she would use every legal means available to her to stop me (Mr. Twomey) if I called her a liar again." In his affidavit, Mr. Twomey also denies that he called Commissioner Kiesling a liar during the Committee meeting.

6. It must also be noted that this was not the first time Mr. Twomey accused the Commission of engaging in dishonest conduct as reflected by the newspaper articles attached hereto as Exhibit "B", all of which reflect statements allegedly made by Mr. Twomey

during Commissioner Kiesling's tenure as a Commissioner.<sup>2</sup>

III. THE PETITION FAILS TO STATE FACTUAL AND LEGAL GROUNDS FOR DISQUALIFICATION

7. The statutes and rules pertinent to the Petition are found in Section 120.71, Florida Statutes (1993)<sup>3</sup> and Rule 25-21.004, Florida Administrative Code. The Petitioners' reliance on Rule 1.432, Florida Rules of Civil Procedure, is misplaced since this rule was repealed effective January 1, 1993. See The Florida Bar Re: Amendment to Florida Rules of Judicial Administration, 609 So.2d 465 (Fla. 1992).<sup>4</sup>

8. The Petition is filed by Citrus County, Sugar Mill Civic and Spring Hill Civic. The Petition contains no affidavit filed by an authorized representative of Citrus County. With respect to Sugar Mill Civic and Spring Hill Civic, the affidavits filed by Mr. Desjardin and Senator Brown-Waite, respectively, verify only that each is a member of his or her respective association and not an authorized representative of the Association. Further, Mr. Desjardin's affidavit acknowledges that he did not personally

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<sup>2</sup>Commissioner Kiesling was appointed to her position of Commissioner on December 2, 1993 and was sworn in and began her duties as a Commissioner on December 7, 1993.

<sup>3</sup>Section 120.71(1), Florida Statutes (1993) provides, in pertinent part: "(1) Notwithstanding the provisions of s. 112.3143, any individual serving alone or with others as an agency head may be disqualified from serving in an agency proceeding for bias, prejudice, or interest when any party to the agency proceeding shows just cause by a suggestion filed within a reasonable period of time prior to the agency proceeding."

<sup>4</sup>Rule 1.432, Florida Rules of Civil Procedure was replaced by Rule 2.160, Florida Rules of Judicial Administration.

witness the exchange between Mr. Twomey and Commissioner Kiesling discussed by Mr. Twomey in Mr. Twomey's affidavit. Although Petitioners maintain Mr. Desjardin need not have personal knowledge of the facts set forth in the Motion, citing Hayslip v. Douglas, 400 So.2d 533 (Fla. 1st DCA 1982), Petitioners overlook the subsequent decision in Gieseke v. Grossman, 418 So.2d 1055, 1057 (Fla. 4th DCA 1982) where the court, citing Hahn v. Frederick, 66 So.2d 823 (Fla. 1953), held that an affidavit which contains no information based on personal knowledge would obviously be legally insufficient. Further, the affidavits of Senator Brown-Waite and Mr. Twomey contain repeated characterizations and conclusions concerning the alleged annoyance of members of the Committee with Commissioner Kiesling, the actions of Commissioner Kiesling and the actions of Mr. Twomey.<sup>5</sup> Such characterizations and conclusions are not statements of fact and are legally insufficient to support a Motion for Disqualification. City of Palatka v. Frederick, 174 So. 826, 828 (Fla. 1937) ("The words in the affidavit 'hostile manner' and 'heckle' are obviously not statements of fact, as they rest entirely within the so-called opinion of persons who arrived at conclusions from a tone of voice or a manner which they conceived to be indicative of bias or prejudice against the parties in the case."). In addition, Mr. Twomey's affidavit obviously is no substitute for a factually and legally sufficient affidavit offered

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<sup>5</sup>For example, in describing Commissioner Kiesling's presentation to the Committee, Mr. Twomey states that "[s]he spoke at some length and in such a forceful manner that she clearly annoyed some members of the Committee." See Affidavit of Michael B. Twomey, at 2.

by a party in support of a request for disqualification.<sup>8</sup> For these reasons alone, the affidavits are legally insufficient to support the Petition and the Petition must be denied.

9. Petitioners' grounds for disqualification are set forth in paragraphs 12 and 13 of the Petition and are based exclusively on alleged violations of various canons set forth in the Code of Judicial Conduct. This entire argument is inapposite. First, the Petitioner relies entirely on canons of the prior Code of Judicial Conduct which has since been superseded and replaced by a new Code of Judicial Conduct adopted by the Supreme Court of Florida effective January 1, 1995. See In re: CODE OF JUDICIAL CONDUCT, 643 So.2d 1037 (Fla. 1994). Moreover, the last part of the new Code of Judicial Conduct entitled Application of Code of Judicial Conduct states as follows:

This Code applies to justices of the Supreme Court and judges of the District Courts of Appeal, Circuit Courts, and County Courts.

Anyone, whether or not a lawyer, who performs judicial functions, including but not limited to a magistrate, court commissioner, special master, general master, domestic relations commissioner, child support hearing officer, or judge of compensation claims, shall, while performing judicial functions, conform with Canons 1, 2A, and 3, and such other provisions of this Code that might

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<sup>8</sup>Mr. Twomey's affidavit, a hodgepodge of alleged facts, opinions, commentary and speculation is relevant only to the extent Petitioners believe that Commissioner Kiesling has displayed a prejudice against Mr. Twomey of a sufficient degree so as to adversely affect the Petitioners. See, e.g., Ginsberg v. Holt, 86 So.2d 650 (Fla. 1950); Edwards v. Andrews, 639 So.2d 677 (Fla. 4th DCA 1994).

reasonably be applicable depending on the nature of the judicial function performed.

Id., 643 So.2d at 1061. Accordingly, Petitioners' entire section setting forth alleged grounds for disqualification is based on alleged violations of the Code of Judicial Conduct which is not applicable to an agency head such as Commissioner Kiesling. Thus, the Petition must be denied.

10. Although Petitioners raise no grounds for disqualification other than those set forth in the repealed and inapplicable Code of Judicial Conduct, it still must be emphasized that under relevant and applicable case law, the facts alleged by the Petitioners do not support disqualification of Commissioner Kiesling. To begin with, Petitioners rely on the 1983 decision in City of Tallahassee v. Florida Public Service Commission, 441 So.2d 620 (Fla. 1983) for the proposition that "[t]he standard to be used in disqualifying an individual serving as an agency head is the same as the standard used in disqualifying a judge. §120.71, Fla. Stat. (1981)." Again, Petitioners rely on inapplicable law and inexplicably fail to bring to the Commission's attention a subsequent appellate court decision which provides an accurate representation of the law. Recently, in Bay Bank & Trust Company v. Lewis, 634 So.2d 672 (Fla. 1st DCA 1994), the Court addressed the issue of whether agency heads should be held to the same standards as judges for purposes of disqualifying an agency head under Section 120.71, Florida Statutes. The Court held, in pertinent part:

The 1983 Florida Legislature deleted the phase "or other causes for which a judge may be recused" from section 120.71 Florida Statutes, so we must assume that the statute was intended to have a different meaning after its amendment. Seddon v. Harpster, 403 So.2d 409, 411 (Fla. 1981). Thus, while a moving party may still disqualify an agency head upon a proper showing of "just cause" under section 120.71, the standards for disqualifying an agency head differ from the standards for disqualifying a judge. This change gives recognition to the fact that agency heads have significantly different functions and duties than do judges. Were we to give section 120.71 the same meaning as that given it in City of Tallahassee v. Florida Public Service Commission, the 1983 amendment to section 120.71 would serve no purpose whatsoever.

Bay Bank & Trust Co., 634 So.2d at 678-679 (emphasis supplied).

11. In Bay Bank, the court recognized that the standards applicable to disqualification of an agency head are more stringent than the standards applicable to disqualification of judges in light of the fact that agency heads serve in investigative, prosecutorial and adjudicative functions. Id., at 679, citing Withrow v. Larkin, 421 U.S. 35, 95 S.Ct. 1456, 43 L.Ed. 2d 712 (1975) and Winslow v. Department of Professional and Occupational Regulation, 348 So.2d 352 (Fla. 1st DCA 1977), cert. denied, 365 So.2d 716 (Fla. 1978). The court held that the petitioners' failure to show any connection between their cessation of campaign support for state comptroller Gerald Lewis and the Department of Banking and Finance's commencement of regulatory proceedings against the petitioners was too tenuous and speculative to establish just cause for disqualification of agency head Lewis under Section 120.71, Florida Statutes. Again, Petitioners have

inexplicably failed to bring this decision to the Commission's attention.

12. With respect to disqualification of judges based on bias or prejudice, the legal test is "... whether the facts alleged would place a reasonably prudent person in fear of not receiving a fair and impartial trial." Livingston v. State, 441 So.2d 1083, 1087 (Fla. 1983). As discussed above, due to the multiple roles performed by agency heads, facts establishing "just cause" are required to disqualify an agency head. Bay Bank & Trust Co., supra; §120.71(1), Fla. Stat. (1993). Under either test, the facts alleged by the Petitioners are legally insufficient to support disqualification of Commissioner Kiesling.

13. The Petition essentially states three fears on the part of Sugarmill Civic and Spring Hill Civic. The Petition alleges that the Associations fear that Commissioner Kiesling is biased in favor of SSU, biased in favor of the uniform rate structure SSU seeks in Docket Nos. 920199-WS and 950495-WS, and is prejudiced against the Petitioners' counsel, Mr. Twomey.<sup>7</sup> The affidavits purporting to support the Petition fail to substantiate such fears.

a. First, the affidavits are legally insufficient for the reasons set forth in paragraph 8, supra.

b. Although the Petition alleges that the Petitioners fear

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<sup>7</sup>Although Citrus County is included as a Petitioner, the Petition does not mention that Citrus County shares the same fears or, for that matter, any fear of bias or prejudice concerning Commissioner Kiesling.

that Commissioner Kiesling is biased in favor of SSU, no verified statements to that effect are set forth in the attached affidavits.

c. The Commission must be mindful that the comments made by Mr. Twomey before the Senate Commerce Committee in March of 1995 were only the latest in a series of public tirades against the Commission, including accusations of dishonesty. Case law confirms that inappropriate remarks by counsel may not be used as a springboard to disqualify the judge to whom such remarks are directed. For example, in State ex. rel. Fuente v. Himes, 36 So.2d 433 (Fla. 1948), a trial court judge's refusal to postpone a case until after the defense lawyer's vacation caused the defense lawyer to ask the judge "... why this case seems more important to your Honor than any other case in this Court?" Further discussion between judge and lawyer ensued and ultimately a suggestion for disqualification was filed. The court denied the suggestion for disqualification whereupon the petitioner filed a writ of prohibition with the Supreme Court of Florida. The Supreme Court of Florida affirmed the denial of the suggestion for disqualification and emphasized the following concerning the defense lawyers comments:

Judge Himes exhibited no ill feeling or discourtesy to Mr. Hardee until it became apparent that the court would not postpone the case until after Mr. Hardee's vacation and Mr. Hardee asked why the Judge showed an undue interest in the case. The implication was clear and unmistakable. It was an affront to the court if spoken in an ordinary manner. Judging from the Judge's reply the question was provocative in nature. A lawyer cannot disagree with the court and deliberately provoke an incident rendering the court

disqualified to proceed further.

State v. Himes, 36 So.2d at 438-439. In Himes, the attorney's questioning of the judge as to why the judge had an undue interest in the case was viewed by the Supreme Court of Florida to be an affront to the court and a deliberate provocation which could not be used as a springboard for disqualification. The inflammatory and provocative nature of the comments made by the defense lawyer in the Himes case pale in comparison with the series of comments made by Mr. Twomey, including his comments before the Senate Commerce Committee, which accuse the Commission of engaging in dishonest actions and tactics.

d. The more recent decision of Oates v. State, 619 So.2d 23 (Fla. 4th DCA 1993), rev. denied, 629 So.2d 134 (Fla. 1993) also is instructive. In Oates, a criminal defendant continually interrupted the proceedings before the court and refused to heed the court's request to remain quiet. Despite being represented by counsel, the defendant persisted in engaging in argumentative exchanges with the judge. The judge ultimately excluded the defendant from the courtroom. The next day an article appeared in the local newspaper quoting the judge as stating that the defendant "... was being an obstinate jerk." The defendant then moved to disqualify the judge based on, among other things, the aforementioned quote. The court denied the motion, convicted the defendant of various crimes and the defendant appealed. With respect to the disqualification issue, the court stated that while the judge's out of court remark was troubling, it did not require

disqualification. The court then addressed the specific comments of the judge:

A jerk is defined as a "stupid, foolish, naive, or unconventional person." Webster's Third New International Dictionary 1213 (3rd ed. 1966). No reasonable person could conclude, on reading the transcript in this case, that this defendant was not "being an obstinate jerk."

Oates, 649 So.2d at 26.

Similarly, in this case, at the March 1995 meeting of the Senate Commerce Committee, Mr. Twomey characterized an action of the Commission as "dishonest." Mr. Twomey previously had made similar comments according to the attached newspaper articles (Exhibit "B") and Commissioner Kiesling was a member of the Commission at the times Mr. Twomey made such remarks. The Petition and Affidavit of Mr. Twomey state that Commissioner Kiesling accused Mr. Twomey of calling her a liar. Mr. Twomey's affidavit denies that he called Commissioner Kiesling a liar. It should be noted that Webster's New Twentieth Century Dictionary 525 (2d Ed. 1983) defines "dishonest" as "not honest" and defines "dishonesty" as "a dishonest act or statement; fraud, lie, etc." (Emphasis supplied.) Commissioner Kiesling's remarks to Mr. Twomey were certainly less offensive than those made by the judge in the Oates case where the court held that the judge should not be disqualified for making such remarks outside the courtroom. Mr. Twomey's defense in his Affidavit that he did not call Commissioner Kiesling a liar is reminiscent of his comments before the Senate Commerce Committee that Senate Bill 298 did not prohibit uniform rates

because it does not include the words uniform rates. Both lack credibility. In sum, the provocative, inflammatory and baseless comments of Mr. Twomey may not be used as a basis to disqualify Commissioner Kiesling particularly when viewed in light of Commissioner Kiesling's justified response and the higher burden attached to disqualifying an agency head such as Commissioner Kiesling under Section 120.71(1), Florida Statutes (1993).

WHEREFORE, for the foregoing reasons, SSU respectfully requests that Commission Kiesling decline to withdraw from this proceeding and that the full Commission, apart from Commissioner Kiesling, deny the Petition to Disqualify Commissioner Kiesling from the above-captioned dockets.

Respectfully submitted,

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KENNETH A. HOFFMAN, ESQ.  
WILLIAM B. WILLINGHAM, ESQ.  
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and

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Southern States Utilities, Inc.'s Memorandum in Opposition to Verified Petition to Disqualify or in the Alternative, to Abstain was furnished to the following by U. S. Mail, this 20th day of September, 1995:

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Bruce Snow, Esq.  
c/o Hernando County Board  
of County Commissioners  
20 N. Main Street, #460  
Brooksville, FL 34601

By: \_\_\_\_\_  
KENNETH A. HOFFMAN, ESQUIRE

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In Re: Application for rate ) DOCKET NO. 920199-WS  
increase in Brevard, ) ORDER NO. PSC-95-1199-PCO-WS  
Charlotte/Lee, Citrus, Clay, ) ISSUED: September 25, 1995  
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). )

In Re: Investigation into the ) DOCKET NO. 930880-WS  
appropriate rate structure for )  
SOUTHERN STATES UTILITIES, INC. )  
for all regulated systems in )  
Bradford, Brevard, Citrus, Clay, )  
Collier, Duval, Hernando, )  
Highlands, Lake, Lee/Charlotte, )  
Marion, Martin, Nassau, Orange, )  
Osceola, Pasco, Putnam, )  
Seminole, St. Johns, St. Lucie, )  
Volusia, and Washington )  
Counties. )

In Re: Application for rate ) DOCKET NO. 950495-WS  
increase and increase in service )  
availability charges by Southern )  
States Utilities, Inc. for )  
Orange-Osceola Utilities, Inc. )  
in Osceola County, and in )  
Bradford, Brevard, Charlotte, )  
Citrus, Clay, Collier, Duval, )  
Hernando, Highlands, )  
Hillsborough, Lake, Lee, Marion, )  
Martin, Nassau, Orange, Osceola, )  
Pasco, Polk, Putnam, Seminole, )  
St. Johns, St. Lucie, Volusia, )  
and Washington Counties. )

**ORDER DECLINING TO WITHDRAW FROM PROCEEDING**

This cause comes on for consideration on a Verified Petition to Disqualify or, In The Alternative, To Abstain (petition) with accompanying affidavits which was filed on September 13, 1995, by

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Citrus County, the Sugar Mill Woods Civic Association, Inc., and the Spring Hill Civic Association, Inc. (Petitioners), in those of the above dockets in which the aforesaid County and Civic Associations are respectively parties. The petition seeks disqualification or abstention from proceeding further in these docketed proceedings based on facts and law alleged to require that result. This petition post-dated by some six weeks the commencement of petitioners' participation in Docket No. 950495-WS and by two and three years, respectively, the commencement of the other two dockets.

On September 20, 1995, Southern States Utilities, Inc. (Utility), filed a Memorandum In Opposition To Verified Petition To Disqualify, Or In The Alternative, To Abstain (opposition). The Utility's opposition alleged that the petition failed to state factual and legal grounds for disqualification.

Petitioners set out the facts relied on most succinctly at pages 8-11 of the petition. Therein, reference is made to a March 7, 1995 meeting of the Commerce Committee of the Florida Senate in which Senate Bill 298 was heard. Senate Bill 298 is described as legislation which would have prohibited "uniform rates." Testifying in support of the bill were its sponsor, Senator Ginny Brown-Waite, Jim Desjardin, a member of the utility committee of a petitioner association, and Michael B. Twomey, petitioners' attorney. The petition also references my presence at the meeting and testimony about SB 298, with specific reference to my concern about "the elimination of uniform rates as a 'tool' [the commission] could use." Petition p. 9. The petition further describes an incident following the consideration of SB 298 in which I am said to have "loudly, and publicly" accused petitioner attorney Michael B. Twomey of calling me a "liar" during his committee testimony on SB 298 and threatening to "get him" with every legal means at my disposal if the alleged behavior occurred again. The recitation by petitioner of the facts concludes with summaries of the affidavits of Mr. Desjardin, Mr. Twomey and Senator Brown-Waite. These affidavits are said to verify that, based on my testimony re: SB 298 and the post-meeting incident described above, petitioners have a well-founded belief that, absent my disqualification, they will be unable to obtain fair and impartial adjudication in the dockets at issue, all of which concern the application of uniform rates to those they represent.

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#### DISCUSSION

##### Applicable Standards

Between pages 2 and 7 of the petition, petitioners set out extensive citations of legal authority in support of their theory that disqualification is required. However, as noted by the Utility, significant portions of the authority relied on by petitioners have been repealed or superseded. Repealed provisions include Rule 1.432, Florida Rules of Civil Procedure,<sup>1</sup> and the Canons of the prior Code of Judicial Conduct.<sup>2</sup> Moreover, petitioners' conclusion that "[t]he standard to be used in disqualifying an individual serving as an agency head is the same as the standard used in disqualifying a judge. . ." is no longer correct. The case that conclusion relied on, City of Tallahassee v. Florida Public Service Commission, 441 So.2d 620 (Fla. 1983), has been superseded by Bay Bank & Trust Company v. Lewis, 634 So.2d 672 (Fla. 1st DCA 1994). Therein, the Court stated:

The 1983 Florida Legislature deleted the phrase "or other causes for which a judge may be recused" from section 120.71, Florida Statutes, so we must assume that the statute was intended to have a different meaning after its amendment [citation omitted]. Thus, while a moving party may still disqualify an agency head upon a proper showing of "just cause" under section 120.71, the standards for disqualifying an agency head differ from the standards for disqualifying a judge. This change gives recognition to the fact that agency heads have significantly different functions and duties than do judges. Were we to give section 120.71 the same meaning as that given it in City of Tallahassee v. Florida Public Service Commission, the 1983 amendment to section 120.71 would serve no purpose whatsoever.

Bay Bank, supra, at 678-9.

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<sup>1</sup>See, The Florida Bar Re: Amendment to Rules of Judicial Administration, 609 So.2d 465 (Fla. 1992).

<sup>2</sup>See, In re: Code of Judicial Conduct, 643 So.2d 1037 (Fla. 1994).

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Thus, the standards that are directly applicable to this matter include Section 120.71, Florida Statutes, as construed by the Court in Bay Bank, and Rule 25-21.004, Florida Administrative Code, promulgated by the Commission. Section 120.71, Florida Statutes, states in pertinent part that:

(1) . . . any individual serving alone or with others as an agency head may be disqualified from serving in an agency proceeding for bias, prejudice, or interest when any party to the agency proceeding shows just cause by a suggestion filed within a reasonable period of time prior to the agency proceeding.

Rule 25-21.004, in turn states, in pertinent part:

(1) A commissioner may be disqualified from hearing or deciding any matter where it can be shown that the commissioner has a bias or a prejudice for or against any party to the proceeding or a financial interest in its outcome.

(3) A petition for disqualification of a commissioner shall state the grounds for disqualification and shall allege facts supportive of those grounds.

Other statutes which bear on these matters include Section 350.041(2)(g) and Section 350.05, Florida Statutes, which speak to the professional conduct of commissioners and the independent, objective and non-partisan manner in which they are to perform their duties. The rest of the authority cited by petitioner, whether repealed or superseded, is not directly applicable or controlling.

Accordingly, the limitation of a judge to the bare determination of legal sufficiency in considering a disqualification motion,<sup>3</sup> and the prohibition against his passing on the truth of the facts alleged are not controlling either, in light of Bay Bank, in an agency head's consideration of a

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<sup>3</sup>See, e.g., Bundy v. Rudd, 366 So.2d 440 (Fla. 1978).

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disqualification motion.<sup>4</sup> With all of the foregoing in mind, I will apply the assertions in the petition to the applicable standards to test whether the petition states a legally sufficient "just cause" requiring disqualification.

Remarks at the March 7, 1995, Senate Commerce Committee Meeting

Based on the petition and accompanying affidavits, I conclude that my testimony at the committee meeting does not constitute just cause for disqualification. There is not a single fact presented relevant to the actual testimony I presented which demonstrates it to be beyond the "discussion of the administration of justice" explicitly permitted by the very judicial canon, formerly Canon 4(B) of the Code of Judicial Conduct, relied upon by petitioners. That canon, even though relevant to the stricter standard applicable to judges, allows those judges, and therefore, a fortiori, an agency head:

[T]o appear at a public hearing before an executive or legislative body or official on matters concerning the law, the legal system, and the administration of justice, and [to] otherwise consult with an executive or legislative body or official, but only on matters concerning the administration of justice.<sup>5</sup>

As to whether my testimony was limited to discussing the administration of justice, the petition offers no facts whatsoever, but only a legal conclusion unsupported by facts:

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<sup>4</sup>Because this motion can be disposed of based only on the facts alleged in the petition, the more stringent standards are applied herein.

<sup>5</sup>The repealed canon is quoted herein because petitioners rely on it. However, it should be noted that the revised canon, although somewhat changed, retains the ability of agency heads to discuss with legislative bodies matters on the law, the legal system or the administration of justice. See, Canon 4(C), Code of Judicial Conduct.

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She was clearly engaging in consulting with a legislative body, but on matters that clearly could not be characterized as "only concerning the administration of justice."

Petition, p. 11.

However, only a single word of my testimony is cited by petitioners, the word "tool," cited at page 9 of the petition. The sentence of testimony containing that word appears at page 15 of the transcript:<sup>6</sup>

We would urge you not to take away one tool in our tool chest that allows us as economic regulators to deal with the significant water problems that are coming. [emphasis supplied]

This testimony is demonstrably aimed at the administration of justice in the context of the Commission's economic regulation of water resources. It does not speak at all to the application or non-application of uniform rates to any specific ratepayers or to litigation concerning any ratepayers, including petitioners. Moreover, the listener reaction reflected an understanding of the limited scope of the testimony:

**Unidentified Speaker:** So, in other words, unified rates is the commission policy where the commission thinks it's a good policy, and is not their policy where they don't think it's a good policy.

**Commissioner Kiesling:** That's right. It's one form of ratemaking that we view as part of our arsenal.

Transcript, p. 25.

The fact that petitioners took it differently and had the feeling or perception that the testimony was directed toward supporting the imposition of uniform rates on them is of no moment. That feeling or perception is not a "fact." See, e.g., City of

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<sup>6</sup>Petitioners quotation should have referenced the tape or a transcript of the Committee Meeting, a copy of which is attached.

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Palatka v. Frederick, 174 So. 826, 828 (Fla. 1937). If there was anything about petitioners' cases that was impermissibly addressed in the testimony it should have been cited as constituting a fact in support of just cause for disqualification. Conversely, where only the single word "tool" was cited, and the context of the testimony containing that word did not concern the imposition of uniform rates on any specific ratepayers, let alone petitioners, or litigation involving petitioners, no fact has been adduced demonstrating the testimony to be other than a neutral discussion about the administration of justice. The testimony cited above specifically allowed for the possibility that a given application of uniform rates might be found to be "bad," a determination which was in the Court's jurisdiction as to petitioners, not the Commission's. Moreover, concern that the testimony was presented "forcefully" assumes that discussions which are forceful cannot be limited to the administration of justice. These assumptions and conclusions are arrived at:

. . . from a tone of voice or a manner which [is] conceived to be indicative of bias or prejudice against the parties in the case.

As such, they are not facts indicating a just cause for disqualification under Section 120.71, Florida Statutes, for bias, prejudice or interest. City of Palatka, supra. To conclude otherwise would result in a ban on the ability of commissioners to respond to the invitations of legislators to address such matters.' That result would be inimical to the administration of justice which is the very subject of the judicial conduct canon petitioners claim to rely on.

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'Petitioner's claim that the testimony was "unsolicited" is unsupported because Senator Brown-Waite's affidavit is based on a lack of knowledge and is therefore legally insufficient:

I had not solicited Commissioner Kiesel's attendance or comments at the Committee meeting and am not aware that any other Senator invited her to speak on the bill.  
[emphasis supplied]

See, e.g., Gieseke v. Grossman, 418 So.2d 1055, 57 (Fla. 4th DCA 1982).

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The Post-Meeting Encounter

There are numerous cases in which extra-judicial occurrences involving judges and attorneys have resulted in disqualification of the judge. For example, a judge's tirade about a lawyer's failure to support that judge for other judicial positions was held to merit disqualification in McDermott v. Grossman, 429 So.2d 393 (Fla. 3rd DCA 1983). Again in Town Center of Islamorada, Inc. v. Overby, 592 So.2d 774 (Fla. 3rd DCA 1992), an extrajudicial dispute which began at a bar luncheon at which an attorney offended the judge by announcing his intent to sue the judges of that circuit warranted disqualification.

However, upon careful reflection, I conclude that even under the more stringent standard applicable to judges, the so-called "strained relations" cases are distinguishable from this matter. As a result, I further conclude that the post-meeting encounter does not constitute just cause for disqualification on the grounds of bias, prejudice or interest. Section 120.71, Fla. Stat.; Rule 25-21.004, Fla. Admin. Code.

The difference between this case and those just cited is that there is nothing wrong with an attorney choosing not to support a judge for a different judicial position. Therefore, being on the receiving end of a tirade about it may cause legitimate concern that the judge is prejudiced. Likewise, suing the judges in the circuit is not improper, and the fact that a judge was offended by it may reflect prejudice against the attorney for his having sued the judge and the judge's colleagues.

In contrast, an attorney that makes a statement that he knows to be false or with reckless disregard as to its truth or falsity "concerning the . . . integrity of a judge . . ." violates Rule 4-8.2 of the Florida Bar's Code of Attorney Conduct. This is true whether or not the statements are made extra-judicially. See, The Florida Bar v. Stokes, 186 So.2d 499 (Fla. 1966) (disparaging and unfair comments about a local judge made by attorney during radio program which judge had no opportunity to rebut required that attorney make a public apology).

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<sup>5</sup>Even though the disqualification of judges is arguably not a standard which must be met, Bay Bank, *supra*, consideration of that more stringent standard adds by that stringency to the confidence with which these issues are addressed here pursuant to Section 120.71 and Rule 25-21.004.

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The Florida Supreme Court expounded at length on the issue of recklessly impugning the integrity of judges in In re: Shimek, 284 So.2d 686 (Fla. 1973). In that case, the attorney filed a memorandum in federal court which claimed that:

The state trial judge avoided the performance of his sworn duty. . . . A product of [the prosecutorial] system who works close with Sheriffs and who must depend on political support and re-election to the bench is not going to do justice.

The District Court judge concluded that this language was:

A scurrilous attack upon members of the state judiciary, completely unwarranted by the record before it.

284 So.2d 686.

The Florida Supreme Court then noted the following:

Nothing is more sacred to man and particularly, to a member of the judiciary, than his integrity. Once the integrity of a judge is in doubt, the efficacy of his decisions are (sic) likely to be questioned. . . . While a lawyer as a citizen has a right to criticize such officials publicly, he should be certain of the merit of his complaint, use appropriate language, and avoid petty criticisms, for unrestrained and intemperate statements tend to lessen public confidence in our legal system.

284 So.2d 688-9.

Several statements of Mr. Twomey, at page 31, lines 23-25 and page 32, lines 1-20, recklessly impugned my integrity. For example, on page 32 of the transcript beginning at line 19, Mr. Twomey states:

The \$150 is a scare tactic, it's dishonest, it's not true. You shouldn't be sucked in by this.

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This hardly comports with either the requirements of Rule 4-8.2 or Shimek. The point is not that an attorney may not disagree, but that the disagreement could have been accomplished without violating these precepts, just as my testimony was accomplished without personally abusing anyone else.

As stated by the Court in Shimek:

Judges are subject to fair criticism. The attorney is bound to use restraint. His statements must be prudent, not rash, irresponsible, and without foundation.

The petitioners' own characterization of the post-meeting encounter confirms that these concerns, rather than any substantive issue involving the clients or their cases, were the subject of the encounter:

Commissioner Riesling berated Mike Twomey for calling her a "liar" and publicly threatened to "get him" with "every legal means at her disposal" if the alleged behavior occurred again. [emphasis supplied]

Unlike the "strained relations" cases, petitioners cannot deduce prejudice from this encounter because, given the attorney's misconduct, it would be proper for the remonstrance and warning to be given at the hearing, should the same conduct occur there. In contrast, it obviously would not be any more proper for the judge in McDermott to lambaste the attorney at the hearing for his failure to support her for other judicial positions than it was to do so extra-judicially.

Finally, as to this issue, showing anger and displeasure has not been found to be a just cause for disqualification if caused by the misbehavior of the defendant himself, let alone that of his attorney:

For a trial judge to indicate anger and displeasure in a direct criminal contempt proceeding in which the defendant was found guilty does not in and of itself indicate that the trial judge is prejudiced against the defendant. The record in this case reflects that if the trial judge was angry and displeased, it was caused by the defendant's

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conduct. Further, there is nothing in the record to reflect any prejudice of the trial judge during the . . . later proceedings.

Dempsey v. State, 415 So.2d 1351 (Fla. 1st DCA 1982). Similarly, in Gates v. State, 619 So.2d 23 (Fla. 4th DCA 1993), rev. denied, 629 So.2d 134 (Fla. 1993), the court found that the judge's remark calling defendant an "obstinate jerk" did not require disqualification where defendant persisted in engaging in argumentative exchanges with the judge. The same is true of this case as well.

#### Timeliness

Section 120.71, Florida Statutes, requires that a petition be filed within a reasonable time prior to the proceeding. There are no rules or case law defining "prior to the proceeding." Rule 25-5.108 of the Model Rules requires a petition to be filed 5 days prior to final hearing. The final proceeding in Docket No. 920199-WS was held November 5 through 11, 1992, prior to my appointment to the Commission. A decision on remand was made on September 12, 1995, before the filing of the subject petition. The subsequent decision of the Commission on August 12, 1995, was not a separate or new proceeding, and the decision scheduled for September 26, 1995, is merely the conclusion of the deliberations from September 12, 1995. Therefore, the petition as applied to Docket No. 920199-WS is untimely as it was filed after the final hearing. Even if it were not untimely, petitioners have clearly waived their right to seek recusal in this case by filing after the subsequent Agenda Conference decision.<sup>9</sup>

The final hearing in Docket No. 930880-WS was held on April 14, 1994. The case is currently pending on appeal. On August 29, 1995, the Commission requested the appellate court to relinquish jurisdiction in order to allow the Commission to re-open the record for the purpose of conforming the Commission's decision on appeal to the appellate court's opinion in Commission Docket No. 920199-WS. If jurisdiction is relinquished, the Commission will not conduct a new proceeding. The full Commission will merely be

<sup>9</sup>On September 12, 1995, at the beginning of argument at the Agenda Conference, attorney for the petitioners did state that he would be filing a petition for recusal. He did not make an oral motion for recusal or seek a continuance based on his imminent motion. Commissioner Kiesling made no comments on the motion.

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taking limited evidence to amplify the trial record. Therefore, the petition is untimely having been filed after the final hearing, inappropriate to the extent the appellate court has jurisdiction over the case, and unfounded as to any future amplification of the record.

In the third case in which petitioners seek recusal, Docket No. 950945-WS, the final hearing has not occurred. However, petitioners knew that this Commissioner was assigned as prehearing officer as early as July 24, 1995, when counsel for petitioners filed a request for full commission review of Procedural Order PSC-95-08290-PCO-WS. Also at that time, counsel for petitioners knew or should have known the dates set for numerous customer service hearings, as well as those for agenda conferences on such matters as the setting of interim rates. Counsel for petitioners has requested other commissioners to order Commissioner Kiesling recused at two of the public hearings held on September 14, and September 20, 1995, where no decisions are made by the Commission, where counsel for petitioners did not allege any further bias or prejudice has occurred, and where those hearings were scheduled prior to the filing of the petition. In fact, it was the scheduling of these hearings to which petitioners objected in their July 24, 1995 motion for full commission review of that procedural order.

The nature of the operation of the Commission constituted with five members is significantly different from the operation of the circuit or county courts and even different from the operation of the Division of Administrative Hearings where such courts have a pool of judges or hearing officers from which to draw. Unlike the recusal of a Commissioner, the recusal of one judge among a pool of judges may be accomplished without a significant danger of permitting the intended or unintended manipulation of the decision-making process.<sup>10</sup> It is disruptive of the orderly process of the Commission, particularly when proceeding to hearing with all five commissioners in their quasi-legislative role of rate making,<sup>11</sup> to fail to bring the matter of recusal to the attention of the Commission at the earliest practical moment.

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<sup>10</sup>In City of Palatka, supra, at 827-828, the Florida Supreme Court held that it would have been improper for the judge to disqualify himself based on a legally insufficient pleading. This decision has higher significance in view of my responsibilities as a part of this collective agency head. Bay Bank, supra.

<sup>11</sup>United Telephone Co. v. Mayo, 345 So.2d 648 (Fla. 1977), at 654 (the fixing of rates is not a judicial function).

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Further, petitioners are customer intervenors to this rate proceeding. Counsel for petitioners knew or should have known that the full commission would be assigned to hear Docket No. 950495-WS. Therefore, counsel for petitioners knew or should have known prior to representing his clients that this commissioner would be hearing this case. In Town Center of Islamorada v. Overby, supra, the court held that ordinarily a party may not bring an attorney into a case after it has been assigned to a judge and then move to disqualify on the grounds of bias against the attorney. So here, where Rule 25-22.039, Florida Administrative Code, provides that an intervenor takes the case as he finds it, where counsel for petitioners knew of his belief of bias prior to representing petitioners in this cause, and where counsel had an opportunity to raise this issue at least upon their first filings in this case, petitioners have waived their right to seek recusal.

#### CONCLUSION

As discussed above, the standards relied on by petitioners are inapposite. Applying applicable standards, the petition is conclusory, untimely and is not legally sufficient to support disqualification. Based on the foregoing, I hereby decline to withdraw from the proceeding.

By ORDER of Commissioner Diane K. Kiesling, as Prehearing Officer, this 25th day of September, 1995.

/s/ Diane K. Kiesling  
DIANE K. KIESLING, Commissioner and  
Prehearing Officer

This is a facsimile copy. A signed copy of the order may be obtained by calling 1-904-413-6770.

( S E A L )

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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.

Further review of this interlocutory order shall be pursuant to Rule 25-21.004, Florida Administrative Code.

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SOUTHERN STATES UTILITIES, INC.  
DOCKET NO. 920199-WS  
REVENUE AND RATE COMPARISONS - WATER  
\$52 CAP

REVISED  
SCHEDULE 2  
September 25, 1995

Water System	Stand Alone Revenue Requirement	Capped Rate Calculation			Percent Revenue Shift	1993 Index %	1994 Pass Through and Index %	Indexed Capped Rate		Estimate of Over/Under Collection in 1991 Test Year		
		Base Facility Charge	Gallonge Charge	Revenue Requirement				Base Facility Charge	Gallonge Charge	Uniform Revenue Requirement	Estimated Undercollection	Estimated Refund
Amelia Island	\$389,527	\$4.77	\$1.01	\$392,754	0.83%	1.03%	-3.01%	\$4.68	\$0.99	\$446,077		\$53,323
Apache Shores	\$32,909	\$11.41	\$3.51	\$32,986	0.23%	5.60%	4.43%	\$12.58	\$3.87	\$13,361	(\$19,623)	
Apple Valley	\$158,378	\$4.39	\$0.89	\$159,710	0.84%	1.33%	1.33%	\$4.51	\$0.92	\$203,004		\$43,294
Bay Lake Estates	\$24,161	\$10.02	\$2.44	\$24,236	0.31%	4.41%	4.27%	\$10.90	\$2.66	\$11,899	(\$12,337)	
Beacon Hills	\$506,690	\$5.09	\$0.83	\$511,082	0.87%	1.27%	-7.84%	\$4.75	\$0.77	\$660,991		\$149,909
Beecher's Point	\$22,958	\$7.84	\$3.65	\$23,027	0.30%	3.17%	3.21%	\$8.35	\$3.89	\$9,807	(\$13,220)	
Burnt Store	\$257,082	\$12.08	\$3.97	\$257,745	0.26%	2.89%	12.79%	\$14.02	\$4.60	\$86,740	(\$171,005)	
Carlton Village	\$20,045	\$5.23	\$1.80	\$20,146	0.50%	2.68%	2.56%	\$5.51	\$1.68	\$16,362	(\$3,784)	
Chuluota	\$203,339	\$8.11	\$2.77	\$203,960	0.31%	2.34%	2.74%	\$8.53	\$2.91	\$99,857	(\$104,102)	
Citrus Park	\$57,680	\$4.40	\$1.60	\$57,986	0.53%	2.49%	2.17%	\$4.61	\$1.67	\$50,459	(\$7,528)	
Citrus Springs Utilities	\$433,552	\$6.38	\$2.39	\$435,161	0.37%	2.04%	-1.51%	\$6.42	\$2.41	\$256,226	(\$178,934)	
Crystal River Highlands	\$23,092	\$9.30	\$3.48	\$23,148	0.24%	5.18%	9.26%	\$10.69	\$4.00	\$9,362	(\$13,786)	
Daetwyler Shores	\$33,216	\$6.47	\$1.58	\$33,380	0.49%	1.41%	0.46%	\$6.59	\$1.61	\$25,900	(\$8,080)	
Deltona Utilities	\$4,097,552	\$4.08	\$1.12	\$4,128,430	0.75%	1.44%	2.57%	\$4.24	\$1.16	\$4,578,736		\$450,306
Dol Ray Manor	\$24,722	\$11.31	\$1.54	\$24,833	0.45%	1.77%	2.21%	\$11.77	\$1.60	\$16,600	(\$8,233)	
Druid Hills	\$79,558	\$6.34	\$1.36	\$80,023	0.58%	1.46%	1.46%	\$6.52	\$1.40	\$67,962	(\$12,061)	
East Lake Harris Estates	\$26,734	\$7.54	\$2.19	\$26,824	0.34%	3.27%	3.07%	\$8.03	\$2.33	\$16,421	(\$10,402)	
Fern Park	\$37,807	\$5.36	\$1.72	\$37,989	0.48%	2.02%	1.92%	\$5.57	\$1.79	\$29,198	(\$8,791)	
Fern Terrace	\$20,874	\$4.50	\$1.28	\$21,005	0.63%	2.24%	2.17%	\$4.70	\$1.34	\$20,759	(\$246)	
Fisherman's Haven	\$22,819	\$4.48	\$1.67	\$22,936	0.51%	2.94%	2.02%	\$4.70	\$1.76	\$19,302	(\$3,634)	
Fountains	\$22,897	\$14.22	\$3.78	\$8,000	-65.06%	40.06%	16.57%	\$23.22	\$6.17	\$2,614	(\$5,386)	
Fox Run	\$73,232	\$15.21	\$3.68	\$52,623	-28.14%	5.60%	-1.91%	\$15.76	\$3.81	\$17,110	(\$35,513)	
Friendly Center	\$6,613	\$9.53	\$2.91	\$6,431	-2.76%	4.97%	4.78%	\$10.48	\$3.20	\$2,897	(\$3,533)	
Golden Terrace	\$24,616	\$8.54	\$2.89	\$24,693	0.31%	4.63%	2.40%	\$9.15	\$3.09	\$12,305	(\$12,388)	
Gospel Island Estates	\$10,389	\$13.20	\$3.88	\$3,517	-66.15%	16.01%	13.85%	\$17.43	\$5.12	\$1,172	(\$2,345)	
Grand Terrace	\$21,420	\$8.47	\$3.23	\$21,478	0.27%	2.34%	2.28%	\$8.87	\$3.38	\$9,449	(\$12,029)	
Harmony Homes	\$20,827	\$8.76	\$1.76	\$20,914	0.42%	2.83%	2.45%	\$9.23	\$1.86	\$13,417	(\$7,497)	
Hermits Cove	\$44,093	\$9.64	\$3.88	\$44,200	0.24%	3.65%	0.73%	\$10.06	\$4.05	\$17,924	(\$26,277)	
Hobby Hills	\$21,548	\$5.67	\$2.67	\$21,621	0.34%	3.11%	2.94%	\$6.02	\$2.83	\$12,661	(\$8,959)	
Holiday Haven	\$28,218	\$9.74	\$3.56	\$28,287	0.25%	2.98%	-3.55%	\$9.67	\$3.53	\$11,952	(\$16,336)	
Holiday Heights	\$18,006	\$9.17	\$2.04	\$18,071	0.36%	3.35%	3.38%	\$9.80	\$2.18	\$10,320	(\$7,751)	
Imperial Mobile Terrace	\$42,742	\$5.72	\$1.64	\$42,941	0.47%	2.40%	2.48%	\$6.00	\$1.72	\$33,686	(\$9,255)	
Intercession City	\$87,213	\$11.33	\$3.94	\$87,404	0.22%	5.12%	5.97%	\$12.62	\$4.39	\$31,312	(\$56,092)	
Interlachen Lake Est./Park Manor	\$51,202	\$8.79	\$2.27	\$51,359	0.31%	3.55%	6.43%	\$9.69	\$2.50	\$28,099	(\$23,261)	
Jungle Den	\$26,199	\$11.55	\$3.51	\$26,254	0.21%	2.89%	2.91%	\$12.23	\$3.72	\$10,394	(\$15,860)	
Keystone Heights	\$247,327	\$5.49	\$1.68	\$248,595	0.51%	1.65%	0.95%	\$5.63	\$1.73	\$191,956	(\$56,639)	
Kingswood	\$15,954	\$8.82	\$2.74	\$15,999	0.29%	3.18%	2.31%	\$9.31	\$2.89	\$7,831	(\$8,168)	
Lake Ajay Estates	\$33,084	\$14.81	\$3.72	\$22,769	-31.18%	6.12%	5.52%	\$16.58	\$4.16	\$7,414	(\$15,355)	
Lake Brantley	\$18,580	\$7.51	\$1.80	\$18,659	0.43%	2.70%	3.24%	\$7.96	\$1.91	\$12,377	(\$6,283)	
Lake Conway Park	\$24,156	\$7.60	\$1.97	\$24,253	0.40%	1.65%	1.13%	\$7.82	\$2.02	\$15,075	(\$9,178)	
Lake Harriet Estates	\$52,819	\$4.96	\$1.23	\$53,151	0.63%	2.08%	1.68%	\$5.15	\$1.27	\$52,216	(\$935)	
Lakeview Villas	\$8,608	\$15.12	\$3.69	\$3,746	-56.48%	13.88%	10.11%	\$18.95	\$4.62	\$1,228	(\$2,518)	
Leilani Heights	\$77,711	\$5.35	\$1.13	\$78,271	0.66%	1.95%	1.02%	\$5.50	\$1.17	\$79,197		\$976

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SOUTHERN STATES UTILITIES, INC.  
DOCKET NO. 920199-WS  
REVENUE AND RATE COMPARISONS - WATER  
\$52 CAP

REVISED  
SCHEDULE 2  
September 25, 1995

Water System	Stand Alone Revenue Requirement	Capped Rate Calculation			Percent Revenue Shift	1993 Index %	1994 Pass Through and Index %	Indexed Capped Rate	
		Base Facility Charge	Gallonaage Charge	Revenue Requirement				Base Facility Charge	Gallonaage Charge
Leisure Lakes	\$49,420	\$8.66	\$2.84	\$49,569	0.30%	3.98%	2.78%	\$9.25	\$3.03
Marco Shores Utilities	\$177,574	\$11.41	\$3.28	\$178,051	0.27%	3.81%	3.51%	\$12.26	\$3.53
Marion Oaks Utilities	\$716,197	\$9.57	\$3.40	\$717,925	0.24%	2.37%	1.15%	\$9.91	\$3.52
Meredith Manor	\$134,074	\$4.78	\$1.30	\$138,776	3.51%	2.05%	1.40%	\$4.94	\$1.35
Morningview	\$13,690	\$7.98	\$2.65	\$13,736	0.34%	3.47%	3.51%	\$8.55	\$2.84
Oak Forest	\$33,379	\$6.28	\$1.78	\$33,529	0.45%	2.50%	2.49%	\$6.59	\$1.87
Oakwood	\$43,047	\$8.63	\$2.41	\$43,179	0.31%	2.36%	1.96%	\$9.01	\$2.51
Palisades Country Club	\$26,911	\$11.98	\$3.53	\$26,983	0.27%	3.39%	5.09%	\$13.02	\$3.83
Palm Port	\$18,937	\$8.02	\$2.47	\$18,993	0.30%	4.68%	4.51%	\$8.77	\$2.70
Palm Terrace	\$355,898	\$8.53	\$3.38	\$356,467	0.16%	2.16%	17.15%	\$10.21	\$4.04
Palms Mobile Home Park	\$10,943	\$9.53	\$1.91	\$10,978	0.32%	5.14%	5.41%	\$10.56	\$2.12
Picciola Island	\$25,190	\$5.06	\$1.45	\$25,329	0.55%	2.33%	1.85%	\$5.27	\$1.51
Pine Ridge Estates	\$42,887	\$6.50	\$2.23	\$43,049	0.38%	2.35%	35.36%	\$9.00	\$3.09
Pine Ridge Utilities	\$166,745	\$4.74	\$1.80	\$167,726	0.59%	1.36%	1.06%	\$4.85	\$1.85
Piney Woods	\$38,889	\$6.21	\$1.59	\$39,078	0.49%	2.42%	2.20%	\$6.50	\$1.66
Point O' Woods	\$65,579	\$5.31	\$2.61	\$65,817	0.36%	3.24%	20.82%	\$6.62	\$3.25
Pomona Park	\$30,225	\$8.05	\$1.86	\$30,336	0.37%	3.26%	3.64%	\$8.61	\$1.99
Postmaster Village	\$50,951	\$9.01	\$2.38	\$51,118	0.33%	3.48%	1.17%	\$9.43	\$2.49
Quail Ridge	\$9,341	\$9.90	\$4.21	\$7,057	-24.45%	4.20%	7.81%	\$11.13	\$4.73
River Grove	\$30,434	\$9.55	\$3.28	\$30,508	0.24%	3.58%	2.84%	\$10.17	\$3.49
River Park	\$61,020	\$8.54	\$2.69	\$61,440	0.69%	3.94%	6.95%	\$9.49	\$2.99
Rolling Green/Rosemont	\$62,289	\$9.59	\$3.19	\$62,450	0.26%	2.56%	0.02%	\$9.84	\$3.27
Salt Springs	\$101,103	\$12.33	\$3.97	\$45,345	-55.15%	1.90%	6.74%	\$13.42	\$4.31
Samira Villas	\$5,869	\$12.09	\$3.48	\$5,886	0.29%	5.41%	6.31%	\$13.54	\$3.89
Saratoga Harbour/Welaka	\$36,277	\$12.05	\$3.69	\$36,334	0.16%	4.43%	5.83%	\$13.32	\$4.08
Silver Lake Est./Western Shores	\$200,446	\$3.56	\$0.53	\$203,223	1.39%	0.88%	0.73%	\$3.61	\$0.54
Silver Lake Oaks	\$15,314	\$7.80	\$4.42	\$7,805	-50.34%	8.77%	13.46%	\$9.63	\$5.45
Skycrest	\$19,928	\$7.38	\$1.85	\$20,008	0.40%	2.43%	2.16%	\$7.72	\$1.93
Spring Hill Utilities	\$3,684,969	\$3.93	\$0.90	\$3,716,819	0.86%	1.08%	0.00%	\$3.98	\$0.91
St. John's Highlands	\$18,374	\$8.81	\$3.18	\$18,419	0.24%	4.78%	4.31%	\$9.63	\$3.47
Stone Mountain	\$6,351	\$13.83	\$3.82	\$5,867	-7.62%	7.18%	9.25%	\$16.20	\$4.47
Sugar Mill	\$142,078	\$8.81	\$3.00	\$142,504	0.30%	4.80%	25.41%	\$11.58	\$3.94
Sugar Mill Woods	\$415,961	\$2.62	\$0.85	\$420,862	1.18%	0.87%	-0.03%	\$2.64	\$0.85
Sunny Hills Utilities	\$155,174	\$8.54	\$3.11	\$155,664	0.32%	3.20%	3.16%	\$9.09	\$3.31
Sunshine Parkway	\$35,015	\$8.42	\$2.40	\$35,148	0.38%	1.40%	-2.04%	\$8.36	\$2.38
Tropical Park	\$110,620	\$5.21	\$2.42	\$111,046	0.38%	3.13%	2.55%	\$5.51	\$2.56
University Shores	\$523,340	\$4.49	\$1.07	\$527,193	0.74%	1.59%	4.34%	\$4.76	\$1.13
Venetian Village	\$25,166	\$6.82	\$1.75	\$25,279	0.45%	3.01%	2.63%	\$7.21	\$1.85
Westmont	\$28,398	\$6.24	\$1.70	\$28,529	0.46%	1.64%	-0.55%	\$6.31	\$1.72
Windsong	\$34,980	\$8.47	\$3.15	\$35,075	0.27%	3.80%	2.93%	\$9.05	\$3.37
Woodmere	\$262,345	\$4.80	\$1.00	\$264,438	0.80%	1.39%	8.23%	\$5.26	\$1.09
Wootens	\$6,887	\$9.41	\$4.26	\$3,697	-46.32%	10.54%	11.31%	\$11.57	\$5.24
Zephyr Shores	\$84,606	\$5.20	\$2.35	\$85,144	0.64%	2.72%	-2.68%	\$5.20	\$2.35
<b>Total</b>	<b>\$15,526,968</b>			<b>\$15,509,714</b>					

Estimate of Over/Under Collection in 1991 Test Year		
Uniform Revenue Requirement	Estimated Undercollection	Estimated Refund
\$24,786	(\$24,783)	
\$68,838	(\$109,213)	
\$298,127	(\$419,798)	
\$132,754	(\$6,022)	
\$6,949	(\$6,787)	
\$23,802	(\$9,727)	
\$23,053	(\$20,126)	
\$9,413	(\$17,571)	
\$10,389	(\$8,604)	
\$154,426	(\$202,041)	
\$6,157	(\$4,821)	
\$22,182	(\$3,147)	
\$26,214	(\$16,835)	
\$132,006	(\$35,721)	
\$29,965	(\$9,113)	
\$40,314	(\$25,503)	
\$19,101	(\$11,236)	
\$26,474	(\$24,644)	
\$2,497	(\$4,561)	
\$13,042	(\$17,466)	
\$32,250	(\$29,190)	
\$25,138	(\$37,312)	
\$16,018	(\$29,327)	
\$2,150	(\$3,736)	
\$13,495	(\$22,839)	
\$401,805		\$198,582
\$2,952	(\$4,653)	
\$13,223	(\$6,785)	
\$4,842,157		\$1,125,339
\$8,516	(\$9,903)	
\$1,880	(\$3,987)	
\$68,028	(\$74,476)	
\$659,319		\$238,457
\$72,189	(\$83,475)	
\$17,819	(\$17,329)	
\$71,249	(\$39,797)	
\$587,922		\$60,728
\$17,766	(\$7,513)	
\$20,876	(\$7,653)	
\$15,635	(\$19,440)	
\$303,162		\$38,725
\$1,521	(\$2,175)	
\$58,683	(\$26,461)	
<b>\$15,545,267</b>	<b>(\$2,321,098)</b>	<b>\$2,359,639</b>

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SOUTHERN STATES UTILITIES, INC.  
DOCKET NO. 920199-WS  
REVENUE AND RATE COMPARISONS - WATER  
\$52 CAP With \$4 Minimum BFC

REVISED  
SCHEDULE 4  
September 25, 1995

Water System	Stand Alone Revenue Requirement	Capped Rate Calculation			Percent Revenue Shift	1993 Index %	1994 Pass Through and Index %	Indexed Capped Rate		Estimate of Over/Under Collection in 1991 Test Year		
		Base Facility Charge	Gallonge Charge	Revenue Requirement				Base Facility Charge	Gallonge Charge	Uniform Revenue Requirement	Estimated Undercollection	Estimated Refund
Amelia Island	\$389,527	\$4.71	\$1.00	\$387,507	-0.52%	1.03%	-3.01%	\$4.61	\$0.98	\$446,077		\$58,569
Apache Shores	\$32,909	\$11.35	\$3.50	\$32,831	-0.24%	5.60%	4.43%	\$12.51	\$3.86	\$13,361	(\$19,470)	
Apple Valley	\$158,378	\$4.33	\$0.88	\$157,145	-0.78%	1.33%	1.33%	\$4.44	\$0.90	\$203,004		\$45,859
Bay Lake Estates	\$24,161	\$9.96	\$2.43	\$24,085	-0.31%	4.41%	4.27%	\$10.84	\$2.64	\$11,899	(\$12,186)	
Beacon Hills	\$506,690	\$5.03	\$0.82	\$505,169	-0.30%	1.27%	-7.84%	\$4.69	\$0.76	\$660,991	\$155,822	
Beecher's Point	\$22,958	\$7.78	\$3.64	\$22,905	-0.23%	3.17%	3.21%	\$8.28	\$3.87	\$9,807	(\$13,099)	
Burnt Store	\$257,082	\$12.02	\$3.96	\$256,943	-0.05%	2.89%	12.79%	\$13.95	\$4.59	\$86,740	(\$170,203)	
Carlton Village	\$20,045	\$5.17	\$1.59	\$19,969	-0.38%	2.68%	2.56%	\$5.44	\$1.67	\$16,362	(\$3,607)	
Chuluota	\$203,339	\$8.05	\$2.76	\$202,866	-0.23%	2.34%	2.74%	\$8.46	\$2.90	\$99,857	(\$103,009)	
Citrus Park	\$57,680	\$4.34	\$1.59	\$57,444	-0.41%	2.49%	2.17%	\$4.54	\$1.66	\$50,459	(\$6,986)	
Citrus Springs Utilities	\$433,552	\$6.32	\$2.39	\$432,821	-0.17%	2.04%	-1.51%	\$6.35	\$2.40	\$256,226	(\$176,594)	
Crystal River Highlands	\$23,092	\$9.24	\$3.48	\$23,069	-0.10%	5.18%	9.26%	\$10.62	\$4.00	\$9,362	(\$13,707)	
Daetwyler Shores	\$33,216	\$6.41	\$1.58	\$33,172	-0.13%	1.41%	0.46%	\$6.53	\$1.61	\$25,300	(\$7,872)	
Deltona Utilities	\$4,097,552	\$4.02	\$1.11	\$4,080,704	-0.41%	1.44%	2.57%	\$4.18	\$1.15	\$4,578,736		\$498,032
Dol Ray Manor	\$24,722	\$11.25	\$1.53	\$24,697	-0.10%	1.77%	2.21%	\$11.70	\$1.59	\$16,600	(\$8,097)	
Druid Hills	\$79,558	\$6.28	\$1.35	\$79,445	-0.14%	1.46%	1.46%	\$6.46	\$1.39	\$67,962	(\$11,482)	
East Lake Harris Estates	\$26,734	\$7.48	\$2.18	\$26,638	-0.36%	3.27%	3.07%	\$7.96	\$2.32	\$16,421	(\$10,216)	
Fern Park	\$37,807	\$5.30	\$1.71	\$37,622	-0.49%	2.02%	1.92%	\$5.51	\$1.78	\$29,198	(\$8,424)	
Fern Terrace	\$20,874	\$4.44	\$1.27	\$20,779	-0.46%	2.24%	2.17%	\$4.64	\$1.32	\$20,759	(\$20)	
Fisherman's Haven	\$22,819	\$4.42	\$1.66	\$22,692	-0.56%	2.94%	2.02%	\$4.64	\$1.74	\$19,302	(\$3,390)	
Fountains	\$22,897	\$14.22	\$3.78	\$8,000	-65.06%	40.06%	16.57%	\$23.22	\$6.17	\$2,614	(\$5,386)	
Fox Run	\$73,232	\$15.21	\$3.68	\$52,623	-28.14%	5.60%	-1.91%	\$15.75	\$3.81	\$17,110	(\$35,512)	
Friendly Center	\$6,613	\$9.47	\$2.90	\$6,400	-3.23%	4.97%	4.78%	\$10.41	\$3.19	\$2,897	(\$3,502)	
Golden Terrace	\$24,616	\$8.48	\$2.88	\$24,555	-0.25%	4.63%	2.40%	\$9.08	\$3.08	\$12,305	(\$12,250)	
Gospel Island Estates	\$10,389	\$13.20	\$3.88	\$3,517	-66.15%	16.01%	13.85%	\$17.43	\$5.12	\$1,172	(\$2,345)	
Grand Terrace	\$21,420	\$8.41	\$3.22	\$21,391	-0.14%	2.34%	2.28%	\$8.80	\$3.37	\$9,449	(\$11,942)	
Harmony Homes	\$20,827	\$8.70	\$1.75	\$20,738	-0.43%	2.83%	2.45%	\$9.16	\$1.84	\$13,417	(\$7,320)	
Hermits Cove	\$44,093	\$9.58	\$3.87	\$43,999	-0.21%	3.65%	0.73%	\$10.00	\$4.04	\$17,924	(\$26,075)	
Hobby Hills	\$21,548	\$5.61	\$2.66	\$21,471	-0.36%	3.11%	2.94%	\$5.95	\$2.82	\$12,661	(\$8,810)	
Holiday Haven	\$28,218	\$9.68	\$3.55	\$28,153	-0.23%	2.98%	-3.55%	\$9.61	\$3.52	\$11,952	(\$16,201)	
Holiday Heights	\$18,006	\$9.11	\$2.03	\$17,954	-0.29%	3.35%	3.38%	\$9.73	\$2.17	\$10,320	(\$7,634)	
Imperial Mobile Terrace	\$42,742	\$5.66	\$1.63	\$42,577	-0.38%	2.40%	2.48%	\$5.94	\$1.71	\$33,686	(\$8,892)	
Intercession City	\$87,213	\$11.27	\$3.93	\$87,061	-0.17%	5.12%	5.97%	\$12.55	\$4.37	\$31,312	(\$55,749)	
Interlachen Lake Est./Park Manor	\$51,202	\$8.73	\$2.26	\$51,049	-0.30%	3.55%	6.43%	\$9.62	\$2.49	\$28,099	(\$22,950)	
Jungle Den	\$26,199	\$11.49	\$3.50	\$26,135	-0.25%	2.89%	2.91%	\$12.16	\$3.70	\$10,394	(\$15,741)	
Keystone Heights	\$247,327	\$5.43	\$1.88	\$247,026	-0.12%	1.85%	0.95%	\$5.57	\$1.72	\$191,956	(\$55,070)	
Kingswood	\$15,954	\$8.76	\$2.73	\$15,914	-0.25%	3.18%	2.31%	\$9.24	\$2.88	\$7,831	(\$8,083)	
Lake Ajay Estates	\$33,084	\$14.81	\$3.72	\$22,769	-31.18%	6.12%	5.52%	\$16.59	\$4.16	\$7,414	(\$15,355)	
Lake Brantley	\$18,580	\$7.47	\$1.79	\$18,556	-0.13%	2.70%	3.24%	\$7.92	\$1.90	\$12,377	(\$6,179)	
Lake Conway Park	\$24,156	\$7.55	\$1.96	\$24,105	-0.21%	1.65%	1.13%	\$7.76	\$2.01	\$15,075	(\$9,030)	
Lake Harriet Estates	\$52,819	\$4.90	\$1.22	\$52,671	-0.28%	2.88%	1.68%	\$5.08	\$1.26	\$52,216	(\$455)	
Lakeview Villas	\$8,606	\$15.12	\$3.69	\$3,746	-56.48%	13.88%	10.11%	\$18.95	\$4.62	\$1,228	(\$2,518)	
Leila Heights	\$77,711	\$5.29	\$1.13	\$77,711	-0.13%	1.95%	1.02%	\$5.45	\$1.16	\$79,197		\$1,585

0028363088

SOUTHERN STATES UTILITIES, INC.  
DOCKET NO. 920199--WS  
REVENUE AND RATE COMPARISONS - WATER  
\$52 CAP With \$4 Minimum BFC

REVISED  
SCHEDULE 4  
September 25, 1995

Water System	Stand Alone Revenue Requirement	Capped Rate Calculation			Percent Revenue Shift	1993 Index %	1994 Pass Through and Index %	Indexed Capped Rate	
		Base Facility Charge	Gallage Charge	Revenue Requirement				Base Facility Charge	Gallage Charge
Leisure Lakes	\$49,420	\$8.60	\$2.83	\$49,291	-0.26%	3.98%	2.78%	\$9.19	\$3.02
Marco Shores Utilities	\$177,574	\$11.35	\$3.28	\$177,474	-0.06%	3.81%	3.51%	\$12.19	\$3.52
Marion Oaks Utilities	\$716,197	\$9.51	\$3.39	\$714,675	-0.21%	2.37%	1.15%	\$9.84	\$3.51
Meredith Manor	\$134,074	\$4.72	\$1.29	\$137,172	2.31%	2.05%	1.40%	\$4.88	\$1.33
Morningview	\$13,690	\$7.92	\$2.64	\$13,654	-0.26%	3.47%	3.51%	\$8.48	\$2.82
Oak Forest	\$33,379	\$6.22	\$1.77	\$33,280	-0.30%	2.50%	2.49%	\$6.53	\$1.86
Oakwood	\$43,047	\$8.57	\$2.40	\$42,926	-0.28%	2.36%	1.96%	\$8.94	\$2.50
Palisades Country Club	\$26,911	\$11.92	\$3.52	\$26,889	-0.08%	3.39%	5.09%	\$12.95	\$3.82
Palm Port	\$18,937	\$7.96	\$2.46	\$18,878	-0.31%	4.68%	4.51%	\$8.71	\$2.69
Palm Terrace	\$355,898	\$8.47	\$3.37	\$354,787	-0.31%	2.16%	17.15%	\$10.13	\$4.03
Palms Mobile Home Park	\$10,943	\$9.47	\$1.90	\$10,909	-0.31%	5.14%	5.41%	\$10.49	\$2.10
Picciola Island	\$25,190	\$5.00	\$1.44	\$25,119	-0.28%	2.33%	1.85%	\$5.21	\$1.50
Pine Ridge Estates	\$42,887	\$6.44	\$2.22	\$42,725	-0.38%	2.35%	35.36%	\$8.92	\$3.07
Pine Ridge Utilities	\$166,745	\$4.68	\$1.79	\$166,067	-0.41%	1.36%	1.06%	\$4.79	\$1.83
Piney Woods	\$38,889	\$6.15	\$1.58	\$38,752	-0.35%	2.42%	2.20%	\$6.43	\$1.65
Point O' Woods	\$65,579	\$5.25	\$2.60	\$65,426	-0.23%	3.24%	20.82%	\$6.55	\$3.24
Pomona Park	\$30,225	\$7.99	\$1.85	\$30,124	-0.33%	3.26%	3.64%	\$8.55	\$1.98
Postmaster Village	\$50,951	\$8.95	\$2.37	\$50,850	-0.20%	3.48%	1.17%	\$9.37	\$2.48
Quail Ridge	\$9,341	\$9.91	\$4.21	\$7,057	-24.45%	4.20%	7.81%	\$11.13	\$4.73
River Grove	\$30,434	\$9.49	\$3.27	\$30,365	-0.23%	3.58%	2.84%	\$10.11	\$3.48
River Park	\$61,020	\$8.48	\$2.68	\$61,073	0.09%	3.94%	6.95%	\$9.42	\$2.98
Rolling Green/Rosemont	\$62,289	\$9.53	\$3.18	\$62,192	-0.16%	2.56%	0.02%	\$9.77	\$3.26
Salt Springs	\$101,103	\$12.33	\$3.97	\$45,345	-55.15%	1.90%	6.74%	\$13.42	\$4.31
Samira Villas	\$5,869	\$12.03	\$3.47	\$5,867	-0.03%	5.41%	6.31%	\$13.48	\$3.89
Saratoga Harbour/Welaka	\$36,277	\$11.99	\$3.68	\$36,182	-0.26%	4.43%	5.83%	\$13.25	\$4.06
Silver Lake Est./Western Shores	\$200,446	\$4.00	\$0.53	\$210,985	5.26%	0.88%	0.73%	\$4.06	\$0.54
Silver Lake Oaks	\$15,314	\$7.80	\$4.42	\$7,605	-50.34%	8.77%	13.46%	\$9.62	\$5.45
Skycrest	\$19,928	\$7.32	\$1.84	\$19,862	-0.33%	2.43%	2.16%	\$7.68	\$1.92
Spring Hill Utilities	\$3,684,969	\$4.00	\$0.90	\$3,724,806	1.08%	1.08%	0.00%	\$4.04	\$0.91
St. John's Highlands	\$18,374	\$8.75	\$3.17	\$18,324	-0.27%	4.78%	4.31%	\$9.56	\$3.46
Stone Mountain	\$6,351	\$13.83	\$3.82	\$5,867	-7.62%	7.18%	9.25%	\$16.19	\$4.47
Sugar Mill	\$142,078	\$8.75	\$2.99	\$141,746	-0.23%	4.80%	25.41%	\$11.50	\$3.93
Sugar Mill Woods	\$415,961	\$4.00	\$0.85	\$492,676	18.44%	0.87%	-0.03%	\$4.03	\$0.86
Sunny Hills Utilities	\$155,174	\$8.48	\$3.10	\$154,871	-0.20%	3.20%	3.16%	\$9.03	\$3.30
Sunshine Parkway	\$35,015	\$8.36	\$2.39	\$34,971	-0.12%	1.40%	-2.04%	\$8.30	\$2.37
Tropical Park	\$110,620	\$5.15	\$2.41	\$110,130	-0.44%	3.13%	2.55%	\$5.44	\$2.55
University Shores	\$523,340	\$4.43	\$1.06	\$521,834	-0.29%	1.59%	4.34%	\$4.69	\$1.12
Venetian Village	\$25,166	\$6.76	\$1.74	\$25,087	-0.31%	3.01%	2.83%	\$7.14	\$1.84
Westmont	\$28,398	\$6.18	\$1.69	\$28,264	-0.47%	1.64%	-0.55%	\$6.24	\$1.71
Windsong	\$34,990	\$8.41	\$3.14	\$34,881	-0.28%	3.80%	2.93%	\$8.98	\$3.35
Woodmere	\$262,345	\$4.74	\$0.99	\$261,945	-0.15%	1.39%	8.23%	\$5.20	\$1.08
Wootens	\$6,887	\$9.41	\$4.26	\$3,697	-46.32%	10.54%	11.31%	\$11.57	\$5.24
Zephyr Shores	\$84,806	\$5.14	\$2.34	\$84,490	-0.14%	2.72%	-2.68%	\$5.14	\$2.34
<b>Total</b>	<b>\$15,526,968</b>			<b>\$15,497,120</b>					

Estimate of Over/Under Collection in 1991 Test Year		
Uniform Revenue Requirement	Estimated Undercollection	Estimated Refund
\$24,786	(\$24,505)	
\$68,838	(\$108,636)	
\$298,127	(\$416,549)	
\$132,754	(\$4,417)	
\$6,949	(\$6,705)	
\$23,802	(\$9,479)	
\$23,053	(\$19,873)	
\$9,413	(\$17,476)	
\$10,389	(\$8,489)	
\$154,426	(\$200,361)	
\$6,157	(\$4,752)	
\$22,182	(\$2,937)	
\$26,214	(\$16,511)	
\$132,006	(\$34,061)	
\$29,965	(\$8,786)	
\$40,314	(\$25,112)	
\$19,101	(\$11,023)	
\$26,474	(\$24,376)	
\$2,497	(\$4,561)	
\$13,042	(\$17,323)	
\$32,250	(\$28,823)	
\$25,138	(\$37,054)	
\$16,018	(\$29,327)	
\$2,150	(\$3,718)	
\$13,495	(\$22,687)	
\$401,805		\$190,821
\$2,952	(\$4,652)	
\$13,223	(\$6,640)	
\$4,842,157		\$1,117,352
\$8,516	(\$9,808)	
\$1,880	(\$3,987)	
\$68,028	(\$73,718)	
\$659,319		\$166,644
\$72,189	(\$82,682)	
\$17,819	(\$17,153)	
\$71,249	(\$38,881)	
\$587,922		\$66,087
\$17,766	(\$7,321)	
\$20,876	(\$7,388)	
\$15,635	(\$19,246)	
\$303,162		\$41,217
\$1,521	(\$2,175)	
\$58,683	(\$25,807)	
<b>\$15,545,267</b>	<b>(\$2,136,541)</b>	<b>\$2,186,166</b>

3089

002837

SOUTHERN STATES UTILITIES, INC.  
DOCKET NO. 920199-WS  
REVENUE AND RATE COMPARISONS - WATER  
\$52 CAP with \$4 Minimum BFC and \$1 Minimum GC

REVISED  
SCHEDULE 6  
September 25, 1995

3090  
002838

Water System	Stand Alone Revenue Requirement	Capped Rate Calculation			Percent Revenue Shift	1993 Index %	1994 Pass Through and Index %	Indexed Capped Rate	
		Base Facility Charge	Gallage Charge	Revenue Requirement				Base Facility Charge	Gallage Charge
Amelia Island	\$389,527	\$4.40	\$1.00	\$380,099	-2.42%	1.09%	-3.01%	\$4.31	\$0.98
Apache Shores	\$32,909	\$10.71	\$3.35	\$31,152	-5.34%	5.60%	4.43%	\$11.81	\$3.69
Apple Valley	\$158,378	\$4.39	\$1.00	\$172,782	9.09%	1.33%	1.33%	\$4.51	\$1.03
Bay Lake Estates	\$24,161	\$9.32	\$2.28	\$22,606	-6.44%	4.41%	4.27%	\$10.15	\$2.48
Beacon Hills	\$506,690	\$5.09	\$1.00	\$583,960	15.25%	1.27%	-7.84%	\$4.75	\$0.93
Beecher's Point	\$22,958	\$7.14	\$3.49	\$21,681	-5.56%	3.17%	3.21%	\$7.60	\$3.72
Burnt Store	\$257,082	\$11.38	\$3.81	\$246,143	-4.26%	2.89%	12.79%	\$13.21	\$4.42
Carlton Village	\$20,045	\$4.53	\$1.44	\$17,933	-10.54%	2.68%	2.56%	\$4.77	\$1.52
Chuluota	\$203,339	\$7.41	\$2.61	\$190,429	-6.35%	2.34%	2.74%	\$7.79	\$2.74
Citrus Park	\$57,680	\$4.00	\$1.44	\$52,446	-9.07%	2.49%	2.17%	\$4.19	\$1.51
Citrus Springs Utilities	\$433,552	\$5.68	\$2.24	\$400,889	-7.53%	2.04%	-1.51%	\$5.71	\$2.25
Crystal River Highlands	\$23,092	\$8.60	\$3.33	\$21,902	-5.15%	5.18%	9.26%	\$9.88	\$3.83
Daetwyler Shores	\$33,216	\$5.77	\$1.43	\$30,028	-9.60%	1.41%	0.46%	\$5.88	\$1.46
Deltona Utilities	\$4,097,552	\$4.00	\$1.05	\$3,911,159	-4.55%	1.44%	2.57%	\$4.16	\$1.09
Dot Ray Manor	\$24,722	\$10.61	\$1.38	\$22,641	-8.42%	1.77%	2.21%	\$11.04	\$1.44
Druid Hills	\$79,558	\$5.64	\$1.20	\$71,006	-10.75%	1.46%	1.46%	\$5.81	\$1.24
East Lake Harris Estates	\$26,734	\$6.84	\$2.03	\$24,580	-8.06%	3.27%	3.07%	\$7.28	\$2.16
Fern Park	\$37,807	\$4.66	\$1.56	\$33,987	-10.10%	2.02%	1.92%	\$4.85	\$1.62
Fern Terrace	\$20,874	\$4.00	\$1.12	\$18,507	-11.34%	2.24%	2.17%	\$4.18	\$1.17
Fisherman's Haven	\$22,819	\$4.00	\$1.51	\$20,656	-9.48%	2.94%	2.02%	\$4.20	\$1.59
Fountains	\$22,897	\$14.22	\$3.78	\$8,000	-65.06%	40.06%	16.57%	\$23.22	\$6.17
Fox Run	\$73,232	\$15.21	\$3.68	\$52,623	-28.14%	5.60%	-1.91%	\$15.75	\$3.81
Friendly Center	\$6,613	\$8.83	\$2.75	\$6,039	-8.68%	4.97%	4.78%	\$9.71	\$3.02
Golden Terrace	\$24,616	\$7.84	\$2.73	\$23,014	-6.51%	4.63%	2.40%	\$8.40	\$2.92
Gospel Island Estates	\$10,389	\$13.20	\$3.88	\$3,517	-66.15%	16.01%	13.85%	\$17.43	\$5.12
Grand Terrace	\$21,420	\$7.77	\$3.07	\$20,213	-5.63%	2.34%	2.28%	\$8.13	\$3.21
Harmony Homes	\$20,827	\$8.06	\$1.60	\$19,072	-8.43%	2.83%	2.45%	\$8.49	\$1.69
Hermits Cove	\$44,093	\$8.94	\$3.72	\$41,754	-5.30%	3.65%	0.73%	\$9.33	\$3.88
Hobby Hills	\$21,548	\$4.97	\$2.51	\$19,891	-7.69%	3.11%	2.94%	\$5.28	\$2.66
Holiday Haven	\$28,218	\$9.04	\$3.40	\$26,656	-5.54%	2.98%	-3.55%	\$8.98	\$3.38
Holiday Heights	\$18,006	\$8.47	\$1.88	\$16,672	-7.41%	3.35%	3.38%	\$9.05	\$2.01
Imperial Mobile Terrace	\$42,742	\$5.02	\$1.48	\$38,378	-10.21%	2.40%	2.48%	\$5.27	\$1.55
Intercession City	\$87,213	\$10.63	\$3.78	\$83,151	-4.66%	5.12%	5.97%	\$11.84	\$4.21
Interlachen Lake Est./Park Manor	\$51,202	\$8.09	\$2.11	\$47,537	-7.16%	3.55%	6.43%	\$8.92	\$2.33
Jungle Den	\$26,199	\$10.85	\$3.35	\$24,831	-5.22%	2.89%	2.91%	\$11.49	\$3.55
Keystone Heights	\$247,327	\$4.79	\$1.53	\$223,136	-9.78%	1.65%	0.95%	\$4.92	\$1.57
Kingswood	\$15,954	\$8.12	\$2.58	\$14,937	-6.37%	3.18%	2.31%	\$8.57	\$2.72
Lake Ajay Estates	\$33,084	\$14.81	\$3.72	\$22,769	-31.18%	6.12%	5.52%	\$16.58	\$4.17
Lake Brantley	\$18,580	\$6.83	\$1.64	\$17,018	-8.41%	2.70%	3.24%	\$7.24	\$1.74
Lake Conway Park	\$24,156	\$6.91	\$1.81	\$22,231	-7.97%	1.65%	1.13%	\$7.10	\$1.86
Lake Harriet Estates	\$52,619	\$4.26	\$1.07	\$46,181	-12.57%	2.08%	1.68%	\$4.42	\$1.11
Lakeview Villas	\$8,606	\$15.12	\$3.69	\$3,746	-56.47%	13.88%	10.11%	\$18.96	\$4.63
Leilar Heights	\$77,711	\$4.65	\$1.00	\$68,774	-11.63%	1.95%	1.02%	\$4.79	\$1.03

Estimate of Over/Under Collection in 1991 Test Year		
Uniform Revenue Requirement	Estimated Undercollection	Estimated Refund
\$446,077		\$65,978
\$13,361	(\$17,791)	
\$203,004		\$30,222
\$11,899	(\$10,707)	
\$660,991		\$77,031
\$9,807	(\$11,874)	
\$86,740	(\$159,403)	
\$16,362	(\$1,571)	
\$99,857	(\$90,572)	
\$50,459	(\$1,987)	
\$256,226	(\$144,663)	
\$9,362	(\$12,540)	
\$25,300	(\$4,728)	
\$4,578,736		\$667,577
\$16,600	(\$6,041)	
\$67,962	(\$3,044)	
\$16,421	(\$8,159)	
\$29,198	(\$4,789)	
\$20,759		\$2,252
\$19,302	(\$1,354)	
\$2,614	(\$5,386)	
\$17,110	(\$35,513)	
\$2,897	(\$3,142)	
\$12,305	(\$10,709)	
\$1,172	(\$2,345)	
\$9,449	(\$10,764)	
\$13,417	(\$5,655)	
\$17,924	(\$23,830)	
\$12,661	(\$7,230)	
\$11,952	(\$14,704)	
\$10,320	(\$6,352)	
\$33,686	(\$4,692)	
\$31,312	(\$51,839)	
\$28,099	(\$19,438)	
\$10,394	(\$14,437)	
\$191,956	(\$31,180)	
\$7,831	(\$7,106)	
\$7,414	(\$15,355)	
\$12,377	(\$4,641)	
\$15,075	(\$7,156)	
\$52,216		\$6,035
\$1,228	(\$2,518)	
\$79,197		\$10,523

SOUTHERN STATES UTILITIES, INC.  
DOCKET NO. 920199-WS  
REVENUE AND RATE COMPARISONS - WATER  
\$52 CAP with \$4 Minimum BFC and \$1 Minimum GC

REVISED  
SCHEDULE 6  
September 25, 1995

3091  
002839

Water System	Stand Alone Revenue Requirement	Capped Rate Calculation			Percent Revenue Shift	1993 Index %	1994 Pass Through and Index %	Indexed Capped Rate	
		Base Facility Charge	Gallonge Charge	Revenue Requirement				Base Facility Charge	Gallonge Charge
Leisure Lakes	\$49,420	\$7.96	\$2.68	\$46,188	-6.54%	3.98%	2.78%	\$8.51	\$2.86
Marco Shores Utilities	\$177,574	\$10.71	\$3.13	\$168,911	-4.88%	3.81%	3.51%	\$11.51	\$3.36
Marion Oaks Utilities	\$716,197	\$8.87	\$3.24	\$677,470	-5.41%	2.37%	1.15%	\$9.18	\$3.35
Meredith Manor	\$134,074	\$4.08	\$1.14	\$120,663	-10.00%	2.05%	1.40%	\$4.22	\$1.18
Morningview	\$13,690	\$7.28	\$2.49	\$12,789	-6.58%	3.47%	3.51%	\$7.80	\$2.67
Oak Forest	\$33,379	\$5.58	\$1.62	\$30,320	-9.16%	2.50%	2.49%	\$5.86	\$1.70
Oakwood	\$43,047	\$7.93	\$2.25	\$40,046	-6.97%	2.36%	1.96%	\$8.28	\$2.35
Palisades Country Club	\$26,911	\$11.28	\$3.37	\$25,724	-4.41%	3.39%	5.09%	\$12.26	\$3.66
Palm Port	\$18,937	\$7.32	\$2.31	\$17,580	-7.17%	4.68%	4.51%	\$8.01	\$2.53
Palm Terrace	\$355,898	\$7.83	\$3.22	\$335,519	-5.73%	2.16%	17.15%	\$9.37	\$3.85
Palms Mobile Home Park	\$10,943	\$8.83	\$1.75	\$10,138	-7.36%	5.14%	5.41%	\$9.79	\$1.94
Picciola Island	\$25,190	\$4.36	\$1.29	\$22,360	-11.23%	2.33%	1.85%	\$4.54	\$1.34
Pine Ridge Estates	\$42,887	\$5.80	\$2.07	\$39,460	-7.99%	2.35%	35.36%	\$8.04	\$2.87
Pine Ridge Utilities	\$166,745	\$4.04	\$1.64	\$149,614	-10.27%	1.36%	1.06%	\$4.14	\$1.68
Piney Woods	\$38,889	\$5.51	\$1.43	\$35,027	-9.93%	2.42%	2.20%	\$5.77	\$1.50
Point O' Woods	\$65,579	\$4.61	\$2.45	\$60,392	-7.91%	3.24%	20.82%	\$5.75	\$3.06
Pomona Park	\$30,225	\$7.35	\$1.70	\$27,735	-8.24%	3.26%	3.64%	\$7.87	\$1.82
Postmaster Village	\$50,951	\$8.31	\$2.22	\$47,558	-6.66%	3.48%	1.17%	\$8.70	\$2.32
Quail Ridge	\$9,341	\$9.91	\$4.21	\$7,057	-24.45%	4.20%	7.81%	\$11.13	\$4.73
River Grove	\$30,434	\$8.85	\$3.12	\$28,737	-5.58%	3.58%	2.84%	\$9.43	\$3.32
River Park	\$61,020	\$7.84	\$2.53	\$57,029	-6.54%	3.94%	6.95%	\$8.72	\$2.81
Rolling Green/Rosemont	\$62,289	\$8.89	\$3.03	\$59,074	-5.16%	2.56%	0.02%	\$9.12	\$3.11
Salt Springs	\$101,103	\$12.33	\$3.97	\$45,345	-55.15%	1.90%	6.74%	\$13.41	\$4.32
Samira Villas	\$5,869	\$11.39	\$3.32	\$5,600	-4.58%	5.41%	6.31%	\$12.76	\$3.72
Saratoga Harbour/Welaka	\$36,277	\$11.35	\$3.53	\$34,493	-4.92%	4.43%	5.83%	\$12.54	\$3.90
Silver Lake Est./Western Shores	\$200,446	\$4.00	\$1.00	\$333,971	66.61%	0.88%	0.73%	\$4.06	\$1.02
Silver Lake Oaks	\$15,314	\$7.80	\$4.42	\$7,605	-50.34%	8.77%	13.46%	\$9.63	\$5.45
Skycrest	\$19,928	\$6.68	\$1.69	\$18,210	-8.62%	2.43%	2.16%	\$6.99	\$1.77
Spring Hill Utilities	\$3,684,969	\$4.00	\$1.00	\$4,007,926	8.76%	1.08%	0.00%	\$4.04	\$1.01
St. John's Highlands	\$18,374	\$8.11	\$3.02	\$17,259	-6.07%	4.78%	4.31%	\$8.86	\$3.30
Stone Mountain	\$6,351	\$13.83	\$3.82	\$5,867	-7.62%	7.18%	9.25%	\$16.19	\$4.47
Sugar Mill	\$142,078	\$8.11	\$2.84	\$133,235	-6.22%	4.80%	25.41%	\$10.66	\$3.73
Sugar Mill Woods	\$415,961	\$4.00	\$1.00	\$543,622	30.69%	0.87%	-0.03%	\$4.03	\$1.01
Sunny Hills Utilities	\$155,174	\$7.84	\$2.95	\$145,855	-6.01%	3.20%	3.16%	\$8.35	\$3.14
Sunshine Parkway	\$35,015	\$7.72	\$2.24	\$32,769	-6.41%	1.40%	-2.04%	\$7.67	\$2.22
Tropical Park	\$110,620	\$4.51	\$2.26	\$101,237	-8.48%	3.13%	2.55%	\$4.77	\$2.39
University Shores	\$523,340	\$4.12	\$1.00	\$490,997	-6.18%	1.59%	4.34%	\$4.37	\$1.06
Venetian Village	\$25,166	\$6.12	\$1.59	\$22,872	-9.12%	3.01%	2.63%	\$6.47	\$1.68
Westmont	\$28,398	\$5.54	\$1.54	\$25,668	-9.61%	1.64%	-0.55%	\$5.60	\$1.56
Windsong	\$34,980	\$7.77	\$2.99	\$32,932	-5.85%	3.80%	2.93%	\$8.30	\$3.19
Woodmere	\$262,345	\$4.80	\$1.00	\$265,317	1.13%	1.39%	8.23%	\$5.27	\$1.10
Wootens	\$6,887	\$9.41	\$4.26	\$3,697	-46.32%	10.54%	11.31%	\$11.58	\$5.24
Zephyr Shores	\$84,606	\$4.50	\$2.19	\$77,149	-8.81%	2.72%	-2.68%	\$4.50	\$2.19
<b>Total</b>	<b>\$15,526,968</b>			<b>\$15,495,013</b>					

Estimate of Over/Under Collection in 1991 Test Year		
Uniform Revenue Requirement	Estimated Undercollection	Estimated Refund
\$24,786	(\$21,402)	
\$68,838	(\$100,073)	
\$298,127	(\$379,343)	
\$132,754		\$12,091
\$6,949	(\$5,840)	
\$23,802	(\$6,518)	
\$23,053	(\$16,993)	
\$9,413	(\$16,311)	
\$10,389	(\$7,191)	
\$154,428	(\$181,093)	
\$6,157	(\$3,981)	
\$22,182	(\$178)	
\$26,214	(\$13,246)	
\$132,006	(\$17,608)	
\$29,965	(\$5,062)	
\$40,314	(\$20,078)	
\$19,101	(\$8,634)	
\$26,474	(\$21,084)	
\$2,497	(\$4,560)	
\$13,042	(\$15,695)	
\$32,250	(\$24,779)	
\$25,138	(\$33,936)	
\$16,018	(\$29,327)	
\$2,150	(\$3,450)	
\$13,495	(\$20,998)	
\$401,805		\$67,834
\$2,852	(\$4,653)	
\$13,223	(\$4,987)	
\$4,842,157		\$834,231
\$8,516	(\$8,743)	
\$1,880	(\$3,987)	
\$68,028	(\$65,207)	
\$659,319		\$115,697
\$72,189	(\$73,668)	
\$17,819	(\$14,950)	
\$71,249	(\$29,988)	
\$587,922		\$96,925
\$17,766	(\$5,106)	
\$20,876	(\$4,792)	
\$15,635	(\$17,297)	
\$303,162		\$37,845
\$1,521	(\$2,176)	
\$58,683	(\$18,466)	
<b>\$15,545,267</b>	<b>(\$1,974,617)</b>	<b>\$2,024,241</b>

SOUTHERN STATES UTILITIES, INC.  
DOCKET NO. 920199-WS  
REVENUE AND RATE COMPARISONS - WATER  
\$52 CAP \$1 Minimum GC

REVISED  
SCHEDULE 7  
September 25, 1995

3092

048200

Water System	Stand Alone Revenue Requirement	Capped Rate Calculation			Percent Revenue Shift	1993 Index %	1994 Pass Through and Index %	Indexed Capped Rate	
		Base Facility Charge	Gallonge Charge	Revenue Requirement				Base Facility Charge	Gallonge Charge
Amefia Island	\$389,527	\$4.40	\$1.00	\$380,176	-2.40%	1.03%	-3.01%	\$4.31	\$0.98
Apache Shores	\$32,909	\$11.03	\$3.44	\$32,028	-2.68%	5.60%	4.43%	\$12.16	\$3.79
Apple Valley	\$158,378	\$4.39	\$1.00	\$172,782	9.09%	1.33%	1.33%	\$4.51	\$1.03
Bay Lake Estates	\$24,161	\$9.64	\$2.37	\$23,425	-3.05%	4.41%	4.27%	\$10.49	\$2.58
Beacon Hills	\$506,690	\$5.09	\$1.00	\$583,960	15.25%	1.27%	-7.84%	\$4.75	\$0.93
Beecher's Point	\$22,958	\$7.46	\$3.58	\$22,344	-2.67%	3.17%	3.21%	\$7.94	\$3.81
Burnt Store	\$257,082	\$11.70	\$3.90	\$252,060	-1.95%	2.89%	12.79%	\$13.58	\$4.53
Carlton Village	\$20,045	\$4.85	\$1.53	\$19,051	-4.96%	2.68%	2.56%	\$5.11	\$1.61
Chuluota	\$203,339	\$7.73	\$2.70	\$197,234	-3.00%	2.34%	2.74%	\$8.13	\$2.84
Citrus Park	\$57,680	\$4.02	\$1.53	\$54,589	-5.36%	2.49%	2.17%	\$4.21	\$1.60
Citrus Springs Utilities	\$433,552	\$6.00	\$2.33	\$418,300	-3.52%	2.04%	-1.51%	\$6.03	\$2.34
Crystal River Highlands	\$23,092	\$8.92	\$3.42	\$22,538	-2.40%	5.18%	9.26%	\$10.25	\$3.93
Daetwyler Shores	\$33,216	\$6.09	\$1.52	\$31,768	-4.36%	1.41%	0.46%	\$6.20	\$1.55
Deltona Utilities	\$4,097,552	\$3.70	\$1.05	\$3,827,481	-6.59%	1.44%	2.57%	\$3.85	\$1.09
Doi Ray Manor	\$24,722	\$10.93	\$1.47	\$23,798	-3.74%	1.77%	2.21%	\$11.37	\$1.53
Druid Hills	\$79,558	\$5.96	\$1.29	\$75,696	-4.85%	1.46%	1.46%	\$6.14	\$1.33
East Lake Harris Estates	\$26,734	\$7.16	\$2.12	\$25,670	-3.98%	3.27%	3.07%	\$7.62	\$2.26
Fern Park	\$37,807	\$4.98	\$1.65	\$35,980	-4.83%	2.02%	1.92%	\$5.18	\$1.72
Fern Terrace	\$20,874	\$4.12	\$1.21	\$19,619	-6.01%	2.24%	2.17%	\$4.30	\$1.26
Fisherman's Haven	\$22,819	\$4.10	\$1.60	\$21,598	-5.35%	2.94%	2.02%	\$4.31	\$1.68
Fountains	\$22,897	\$13.84	\$3.70	\$7,827	-65.82%	40.06%	16.57%	\$22.60	\$6.04
Fox Run	\$73,232	\$14.83	\$3.61	\$51,495	-29.68%	5.60%	-1.91%	\$15.36	\$3.74
Friendly Center	\$6,613	\$9.15	\$2.84	\$6,236	-5.70%	4.97%	4.78%	\$10.06	\$3.12
Golden Terrace	\$24,616	\$8.16	\$2.82	\$23,835	-3.17%	4.63%	2.40%	\$8.74	\$3.02
Gospel Island Estates	\$10,389	\$12.82	\$3.81	\$3,438	-66.91%	16.01%	13.85%	\$18.93	\$5.03
Grand Terrace	\$21,420	\$8.09	\$3.16	\$20,855	-2.64%	2.34%	2.28%	\$8.47	\$3.31
Harmony Homes	\$20,827	\$8.38	\$1.69	\$20,000	-3.97%	2.83%	2.45%	\$8.83	\$1.78
Hermits Cove	\$44,093	\$9.26	\$3.81	\$42,947	-2.60%	3.65%	0.73%	\$9.67	\$3.98
Hobby Hills	\$21,548	\$5.29	\$2.60	\$20,746	-3.72%	3.11%	2.94%	\$5.62	\$2.76
Holiday Haven	\$28,218	\$9.36	\$3.49	\$27,451	-2.72%	2.98%	3.55%	\$9.30	\$3.47
Holiday Heights	\$18,006	\$8.79	\$1.97	\$17,384	-3.45%	3.35%	3.38%	\$9.39	\$2.10
Imperial Mobile Terrace	\$42,742	\$5.34	\$1.57	\$40,664	-4.86%	2.40%	2.48%	\$5.60	\$1.65
Intercession City	\$87,213	\$10.95	\$3.87	\$85,261	-2.24%	5.12%	5.97%	\$12.20	\$4.31
Interlachen Lake Est./Park Manor	\$51,202	\$8.41	\$2.20	\$49,422	-3.48%	3.55%	6.43%	\$9.27	\$2.42
Jungle Den	\$26,199	\$11.17	\$3.44	\$25,517	-2.60%	2.89%	2.91%	\$11.83	\$3.64
Keystone Heights	\$247,327	\$5.11	\$1.62	\$236,255	-4.48%	1.65%	0.95%	\$5.24	\$1.66
Kingswood	\$15,954	\$8.44	\$2.67	\$15,465	-3.07%	3.18%	2.31%	\$8.91	\$2.82
Lake Ajay Estates	\$33,084	\$14.43	\$3.65	\$22,279	-32.66%	6.12%	5.52%	\$16.16	\$4.09
Lake Brantley	\$18,580	\$7.15	\$1.73	\$17,870	-3.82%	2.70%	3.24%	\$7.58	\$1.83
Lake Conway Park	\$24,156	\$7.23	\$1.90	\$23,266	-3.68%	1.65%	1.13%	\$7.43	\$1.95
Lake Harriet Estates	\$52,819	\$4.58	\$1.16	\$49,771	-5.77%	2.08%	1.68%	\$4.75	\$1.20
Lakeview Villas	\$8,606	\$14.74	\$3.62	\$3,659	-57.48%	13.88%	10.11%	\$18.48	\$4.54
Leifair Heights	\$77,711	\$4.97	\$1.07	\$73,711	-5.75%	1.95%	1.02%	\$5.12	\$1.10

Estimate of Over/Under Collection in 1991 Test Year		
Uniform Revenue Requirement	Estimated Undercollection	Estimated Refund
\$446,077		\$65,901
\$13,361	(\$18,667)	
\$203,004		\$30,222
\$11,899	(\$11,526)	
\$660,991		\$77,031
\$9,807	(\$12,537)	
\$86,740	(\$165,320)	
\$16,362	(\$2,689)	
\$99,857	(\$97,377)	
\$50,459	(\$4,130)	
\$256,226	(\$162,074)	
\$9,362	(\$13,176)	
\$25,300	(\$6,468)	
\$4,578,736		\$751,255
\$16,600	(\$7,198)	
\$67,962	(\$7,734)	
\$16,421	(\$9,249)	
\$29,198	(\$6,782)	
\$20,759		\$1,140
\$19,302	(\$2,296)	
\$2,614	(\$5,213)	
\$17,110	(\$34,385)	
\$2,897	(\$3,339)	
\$12,305	(\$11,530)	
\$1,172	(\$2,266)	
\$9,449	(\$11,406)	
\$13,417	(\$6,583)	
\$17,924	(\$25,023)	
\$12,661	(\$8,085)	
\$11,952	(\$15,499)	
\$10,320	(\$7,064)	
\$33,686	(\$6,978)	
\$31,312	(\$53,949)	
\$28,099	(\$21,323)	
\$10,394	(\$15,123)	
\$191,956	(\$44,299)	
\$7,831	(\$7,634)	
\$7,414	(\$14,865)	
\$12,377	(\$5,493)	
\$15,075	(\$8,191)	
\$52,216		\$2,445
\$1,228	(\$2,431)	
\$79,197		\$5,952

SOUTHERN STATES UTILITIES, INC.  
DOCKET NO. 920199-WS  
REVENUE AND RATE COMPARISONS - WATER  
\$52 CAP \$1 Minimum GC

REVISED  
SCHEDULE 7  
September 25, 1995

3093  
002841

Water System	Stand Alone Revenue Requirement	Capped Rate Calculation			Percent Revenue Shift	1993 Index %	1994 Pass Through and Index %	Indexed Capped Rate	
		Base Facility Charge	Gallonge Charge	Revenue Requirement				Base Facility Charge	Gallonge Charge
Leisure Lakes	\$49,420	\$8.28	\$2.77	\$47,839	-3.20%	3.98%	2.78%	\$8.85	\$2.96
Marco Shores Utilities	\$177,574	\$11.03	\$3.22	\$173,624	-2.22%	3.81%	3.51%	\$11.85	\$3.46
Marion Oaks Utilities	\$716,197	\$9.19	\$3.33	\$697,610	-2.60%	2.37%	1.15%	\$9.52	\$3.45
Meredith Manor	\$134,074	\$4.40	\$1.23	\$129,766	-3.21%	2.05%	1.40%	\$4.55	\$1.27
Morningview	\$13,690	\$7.60	\$2.58	\$13,263	-3.12%	3.47%	3.51%	\$8.14	\$2.76
Oak Forest	\$33,379	\$5.90	\$1.71	\$31,950	-4.28%	2.50%	2.49%	\$6.20	\$1.80
Oakwood	\$43,047	\$8.25	\$2.34	\$41,598	-3.37%	2.36%	1.96%	\$8.61	\$2.44
Palisades Country Club	\$26,911	\$11.60	\$3.46	\$26,383	-1.96%	3.39%	5.09%	\$12.60	\$3.76
Palm Port	\$18,937	\$7.64	\$2.40	\$18,278	-3.48%	4.68%	4.51%	\$8.36	\$2.63
Palm Terrace	\$355,898	\$8.15	\$3.31	\$345,960	-2.79%	2.16%	17.15%	\$9.75	\$3.96
Palms Mobile Home Park	\$10,943	\$9.15	\$1.84	\$10,548	-3.61%	5.14%	5.41%	\$10.14	\$2.04
Picciola Island	\$25,190	\$4.68	\$1.38	\$23,879	-5.20%	2.33%	1.85%	\$4.88	\$1.44
Pine Ridge Estates	\$42,887	\$6.12	\$2.16	\$41,246	-3.83%	2.35%	35.36%	\$8.48	\$2.99
Pine Ridge Utilities	\$166,745	\$4.36	\$1.73	\$158,580	-4.90%	1.36%	1.06%	\$4.47	\$1.77
Piney Woods	\$38,889	\$5.83	\$1.52	\$37,085	-4.64%	2.42%	2.20%	\$6.10	\$1.59
Point O' Woods	\$65,579	\$4.93	\$2.54	\$63,109	-3.77%	3.24%	20.82%	\$6.15	\$3.17
Pomona Park	\$30,225	\$7.67	\$1.79	\$29,015	-4.00%	3.26%	3.64%	\$8.21	\$1.92
Postmaster Village	\$50,951	\$8.63	\$2.31	\$49,375	-3.09%	3.48%	1.17%	\$9.03	\$2.42
Quail Ridge	\$9,341	\$9.53	\$4.14	\$6,888	-26.26%	4.20%	7.81%	\$10.71	\$4.65
River Grove	\$30,434	\$9.17	\$3.21	\$29,616	-2.69%	3.58%	2.84%	\$9.77	\$3.42
River Park	\$61,020	\$8.16	\$2.62	\$59,164	-3.04%	3.94%	6.95%	\$9.07	\$2.91
Rolling Green/Rosemont	\$62,289	\$9.21	\$3.12	\$60,817	-2.36%	2.56%	0.02%	\$9.45	\$3.20
Salt Springs	\$101,103	\$11.96	\$3.89	\$44,229	-56.25%	1.90%	6.74%	\$13.01	\$4.23
Samira Villas	\$5,869	\$11.71	\$3.41	\$5,747	-2.08%	5.41%	6.31%	\$13.12	\$3.82
Saratoga Harbour/Welaka	\$36,277	\$11.67	\$3.62	\$35,392	-2.44%	4.43%	5.83%	\$12.90	\$4.00
Silver Lake Est./Western Shores	\$200,446	\$3.56	\$1.00	\$325,935	62.60%	0.88%	0.73%	\$3.62	\$1.02
Silver Lake Oaks	\$15,314	\$7.42	\$4.35	\$7,401	-51.67%	8.77%	13.46%	\$9.16	\$5.37
Skycrest	\$19,928	\$7.00	\$1.78	\$19,099	-4.16%	2.43%	2.16%	\$7.33	\$1.86
Spring Hill Utilities	\$3,684,969	\$3.93	\$1.00	\$3,986,611	8.19%	1.08%	0.00%	\$3.97	\$1.01
St. John's Highlands	\$18,374	\$8.43	\$3.11	\$17,828	-2.97%	4.78%	4.31%	\$9.21	\$3.40
Stone Mountain	\$6,351	\$13.45	\$3.74	\$5,747	-9.51%	7.18%	9.25%	\$15.75	\$4.38
Sugar Mill	\$142,078	\$8.43	\$2.93	\$137,784	-3.02%	4.80%	25.41%	\$11.08	\$3.85
Sugar Mill Woods	\$415,961	\$2.62	\$1.00	\$472,251	13.53%	0.87%	-0.03%	\$2.64	\$1.01
Sunny Hills Utilities	\$155,174	\$8.16	\$3.04	\$150,715	-2.87%	3.20%	3.16%	\$8.69	\$3.24
Sunshine Parkway	\$35,015	\$8.04	\$2.33	\$34,023	-2.83%	1.40%	-2.04%	\$7.99	\$2.31
Tropical Park	\$110,620	\$4.83	\$2.35	\$106,047	-4.13%	3.13%	2.55%	\$5.11	\$2.49
University Shores	\$523,340	\$4.12	\$1.00	\$491,108	-6.16%	1.59%	4.34%	\$4.37	\$1.06
Venetian Village	\$25,166	\$6.44	\$1.68	\$24,077	-4.33%	3.01%	2.63%	\$6.81	\$1.78
Westmont	\$28,398	\$5.86	\$1.63	\$27,099	-4.57%	1.64%	-0.55%	\$5.92	\$1.65
Windsong	\$34,980	\$8.09	\$3.08	\$33,995	-2.82%	3.80%	2.93%	\$8.64	\$3.29
Woodmere	\$262,345	\$4.80	\$1.00	\$265,317	1.13%	1.39%	8.23%	\$5.27	\$1.10
Woolens	\$6,887	\$9.03	\$4.19	\$3,589	-47.89%	10.54%	11.31%	\$11.11	\$5.16
Zephyr Shores	\$84,606	\$4.82	\$2.28	\$81,042	-4.21%	2.72%	-2.68%	\$4.82	\$2.28
<b>Total</b>	<b>\$15,526,968</b>			<b>\$15,495,000</b>					

Estimate of Over/Under Collection in 1991 Test Year		
Uniform Revenue Requirement	Estimated Undercollection	Estimated Refund
\$24,786	(\$23,053)	
\$68,838	(\$104,786)	
\$298,127	(\$399,483)	
\$132,754		\$2,988
\$6,949	(\$6,314)	
\$23,802	(\$8,148)	
\$23,053	(\$18,545)	
\$9,413	(\$16,970)	
\$10,389	(\$7,889)	
\$154,426	(\$191,534)	
\$6,157	(\$4,391)	
\$22,182	(\$1,697)	
\$26,214	(\$15,032)	
\$132,006	(\$26,574)	
\$29,965	(\$7,120)	
\$40,314	(\$22,795)	
\$19,101	(\$9,914)	
\$26,474	(\$22,901)	
\$2,497	(\$4,391)	
\$13,042	(\$16,574)	
\$32,250	(\$26,914)	
\$25,138	(\$35,679)	
\$16,018	(\$28,211)	
\$2,150	(\$3,597)	
\$13,495	(\$21,897)	
\$401,805		\$75,870
\$2,952	(\$4,449)	
\$13,223	(\$5,876)	
\$4,842,157		\$855,546
\$8,516	(\$9,312)	
\$1,880	(\$3,867)	
\$68,028	(\$69,756)	
\$659,319		\$187,068
\$72,189	(\$78,526)	
\$17,819	(\$16,204)	
\$71,249	(\$34,798)	
\$587,922		\$96,814
\$17,766	(\$6,311)	
\$20,876	(\$6,223)	
\$15,635	(\$18,360)	
\$303,162		\$37,845
\$1,521	(\$2,068)	
\$58,683	(\$22,359)	
<b>\$15,545,267</b>	<b>(\$2,140,424)</b>	<b>\$2,190,077</b>