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STATE OF FLORIDA
OFFICE OF THE PUBLIC COUNSEL

c/o The Florida Legislature
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March 24, 1997

Blanca S. Bayo, Director
Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

Re: Docket No. 950495-WS

Dear Ms. Bayo:

Enclosed for filing in the above-referenced docket are the original and 15 copies of the Tropical Isles Homeowners Associations' Petition to Levy Fine for Failure to Comply with Commission Order; Petition to Establish Wastewater Rates Based Upon Water Consumption Data and Offer to Take Over Facilities. A diskette in WordPerfect 6.1 is also submitted.

Please indicate the time and date of receipt on the enclosed duplicate of this letter and return it to our office.

ACK 1
AFA _____
APP 1
CAF _____
CMU _____
CTR _____
EAG _____
LEG 3
LIN 5HM:bsr

ENC — Enclosures

RCH _____

SEP 1

W-S Willis

Sincerely,

Harold McLean
Associate Public Counsel

RECEIVED & FILED

EPSC-BUREAU OF RECORDS

DOCUMENT NUMBER-DATE

03100 MAR 24 5

FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for a 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: March 24, 1997

PETITION TO LEVY FINE FOR
FAILURE TO COMPLY WITH COMMISSION ORDER

PETITION TO ESTABLISH WASTEWATER RATES
BASED UPON WATER CONSUMPTION DATA

and

OFFER TO TAKE OVER FACILITIES

FINE OR OTHER PENALTY

The Tropical Isles Homeowners Association (TIHA) petitions the Florida Public Service Commission (commission) to levy a fine on Florida Water Services Corporation (FWSC) for failure to comply with a lawful commission order, and to order immediate compliance with said order on pain of additional fine(s) and as grounds therefore say:

1. In order PSC-96-1320-FOF-WS the commission declined to establish wastewater rates based upon water consumption for the Tropical Isles service area because FWSC, f/k/a Southern States Utilities, Inc., had either neglected or otherwise

failed to obtain water consumption data from the service area's supplier of water, the Ft. Pierce Utilities Authority. (FPUA)

2. Order PSC-96-1320-FOF-WS required FWSC to:
 - a. investigate whether this information [the water consumption data] can be feasibly obtained from Ft. Pierce; [FPUA]¹
 - b. File a report with this commission within 120 days of the issuance date of this Order. This report shall detail the steps taken in this investigation, as well as the utility's calculation of a metered rate taking into account the approved wastewater rate structure;
 - c. Notify the customers of Tropical Isles that this issue is being explored and that the results will be presented to the Commission;²
 - d. Provide, in conjunction with the report regarding metering [set forth above] a report addressing the feasibility of implementing a vacation rate.
3. The issue date of order PSC-96-1320-FOF-WS was October 30, 1996; more than 120 days have passed since that date;
4. Based upon best information and belief, FWSC has complied with none of the above requirements clearly imposed upon it by order PSC-96-1320-FOF-WS;
5. Where an order of the commission is ignored by a regulated utility such as FWSC, Florida law authorizes this commission to impose a penalty upon the utility.

Section 367.161(2), Florida Statutes (1987) provides:

The commission has the power to impose upon any entity that is subject

¹ Petitioner will show that it obtained the consumption data from the City of Ft. Pierce with minimal effort during the time which FWSC was ordered to investigate the availability of obtaining the data.

² Petitioner will show that its representative wrote to FWSC regarding this requirement and that no reply has been received from FWSC.

to its jurisdiction under this chapter and that is found to have refused to comply with, or to have willfully violated, any lawful rule or order of the commission or any provision of this chapter a penalty for each offense of not more than \$5,000, which penalty shall be fixed, imposed and collected by the commission, or the commission may , on any such violation, amend, suspend, or revoke any certificate of authorization issued by it. Each day that such refusal or violation continues constitutes a separate offense.

6. PSC-96-1320-FOF-WS is a lawful order of the commission--none of the provisions which clearly and unequivocally set forth the several requirements on FWSC are questioned by the utility through motion for reconsideration, appeal, or the like, and the utility is clearly on notice, both actual and constructive of the substance of the requirements.

ESTABLISH NEW WASTEWATER RATES

7. As the commission noted in Order no. PSC-96-1320-FOF-WS, Tropical Isles receives water service from the FPUA; the water consumption is metered on an individual basis;

8. The FPUA will freely provide water consumption data to FWSC, and would have done so at any time requested by FWSC;³

9. FWSC's and its predecessor SSU's failure to so much as request the data has resulted in Tropical Isles' being included in FWSC's rate structure as if water consumption data were not available, thus resulting in wastewater billing which was less accurate than it could have been, given the easily available water consumption

³ Mr. Ludsen of SSU testified that SSU had made no effort to obtain water consumption data from Ft. Pierce. (PSC-96-1320-FOF-WS, p 239)

data from Ft. Pierce;

10. As order no. PSC-96-1320-FOF-WS notes, Tropical Isles is an exception to the rate structure approved for wastewater only systems for which there is no water consumption data available; nonetheless, both interim and final rates in this case were established by the commission with out any expression of Tropical Isles' exceptional status in the rates charged to customers;

11. FWSC was in the best position to obtain the water consumption data from FPUA--however it was apparently easier for FWSC to simply throw Tropical Isles in with the rest of the wastewater only systems and not trouble themselves with obtaining water consumption data. Indeed, even in the face of a commission order directing FWSC to investigate the availability of the data (among its other directions) FWSC has done nothing;

12. The members of TIHA are entitled to have fair and new rates established based upon their water consumption, and they are entitled to a refund, calculated from the date of the establishment of interim rates, to which they would be entitled had the appropriate water-consumption rates been in effect since the that time;

13. If any such refund results in a revenue short fall to FWSC, the commission should find that the short fall was avoidable by FWSC's simply asking FPUA for the Water consumption data, which they did not do.

OFFER TO TAKE OVER FACILITIES

14. FWSC paid ten dollars to the former owner of Tropical Isle wastewater facilities

and may have made other capital improvements to the system;⁴

15. The undersigned representative of the former owner of Tropical Island wastewater facilities, Roger Shacket, stands ready to reimburse FWSC its ten dollars, and any recorded capital improvements accomplished by FWSC since its purchase;

16. The undersigned former owner, Roger Shacket, represents to the commission that he will re-establish rates at the pre SSU/FWSC level which approximates one-third of the commission approved interim rates;

17. Relinquishing the system to the former owner would benefit FWSC by relieving them of the losses they claim to have been incurring in the Tropical Isles system.

WHEREFORE, TIHA hereby petitions the commission to enter its order assessing an appropriate fine against FWSC for its wilful failure to comply with the referenced provisions of PSC-96-1320-FOF-WS, and to further enter its order assessing such appropriate fine(s) until such time as full compliance with the referenced requirements of PSC-96-1320-FOF-WS is had; Petitioners also ask the commission to enter its order establishing wastewater rates based upon water consumption effective and providing for such refund(s) as would be appropriate had FWSC asked for and received water consumption data from the FPUA from the outset; or in the alternative, the undersigned representative of the former owner offers to take the plant back from FWSC, to return its purchase price of ten dollars (\$10) to

⁴ Notwithstanding the purchase price, the commission final order in this docket permits FWSC to earn as if it had invested far more in the system.

compensate FWSC for what ever capital improvements it can show have been made to the plant and related facilities, and Petitioners ask for such other relief as may be appropriate in the premises.

Moreover, petitioners request a hearing on their petition, and request that any such hearing be held within or as near as practical to the service area of the Tropical Isles system, and during the months of November through April.

Respectfully Submitted,

Tropical Isles Homeowners Association

by: Carol B. Sandt
Carol Sandt

Attest: Robert J. Simpson
Robert J. Simpson

Roger Shacket
Roger Shacket
(Former Owner's representative)

**CERTIFICATE OF SERVICE
DOCKET NO. 950495-WS**

I HEREBY CERTIFY that a correct copy of the foregoing has been furnished by U.S. Mail or *hand-delivery to the following party representatives on this 24th day of March, 1997.

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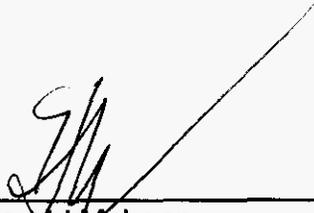
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