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ORIGINAL
FILE COPY

September 20, 1995

HAND DELIVERY

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

Re: Docket Nos. 920199-WS, 930880-WS and 950495-WS

Dear Ms. Bayo:

Enclosed herewith for filing in the above-referenced docket on behalf of Southern States Utilities, Inc. are the following documents:

1. Original and fifteen copies of Southern States Utilities, Inc.'s Memorandum in Opposition to Verified Petition to Disqualify or in the Alternative, to Abstain;

2. Two tapes in a brown envelope marked Exhibit "A" attached to the original of this pleading; and 09315-95

3. A diskette in Word Perfect 6.0 containing a copy of the document entitled "SSU.Response."

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

Thank you for your assistance with this filing.

Sincerely,

Kenneth A. Hoffman

KAH/rl

cc: All Parties of Record

ACK 1
AFA 3
APP
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CTR
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DOCUMENT NUMBER-DATE
09314 SEP 20 95
FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application of Southern States Utilities, Inc. and Deltona Utilities, Inc. for Increased Water and and Wastewater Rates in Citrus, Nassau, Seminole, Osceola, Duval, Putnam, Charlotte, Lee, Lake, Orange, Marion, Volusia, Martin, Clay, Brevard, Highlands, Collier, Pasco, Hernando, and Washington Counties.	Docket No. 920199-WS
In re: Investigation into the appropriate rate structure for SOUTHERN STATES UTILITIES, INC. 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.	Docket No. 930880-WS
In re: 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: September 20, 1995

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

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09314 SEP 20 95
FPSC-RECORDS/REPORTING

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.

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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.[1] 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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[1]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.[2]

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)[3] 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).[4]

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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[2]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.

[3]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."

[4]Rule 1.432, Florida Rules of Civil Procedure was replaced by Rule 2.160, Florida Rules of Judicial Administration.

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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.[5] 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

[5]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.[6] 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

[6]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).

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> 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

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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.[7] 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 that Commissioner Kiesling is biased in favor of SSU, no verified

[7]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.

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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and

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1000 Color Place
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(407) 880-0058

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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

EXHIBIT "A"

TAPES PROVIDED WITH ORIGINAL OF SSU'S MEMORANDUM
IN OPPOSITION TO VERIFIED PETITION TO
DISQUALIFY OR IN THE ALTERNATIVE, TO ABSTAIN

St. Petersburg Times
August 13, 1994

Decision on rates to come next week

■ The vote on Southern States Utilities' controversial uniform water rates will be Thursday.

By LEANORA MINAI
Times Staff Writer

The state Public Service Commission will decide Thursday whether Southern States Utilities customers will continue to pay a uniform statewide rate for water and sewer service.

If the flat rate is upheld by the PSC, the controversial order, reconsidered by the PSC staff during the last several months, means SSU's 26,000 customers in Spring Hill would pay an additional $4.21 per month for 10,000 gallons of water. SSU also has customers in Citrus County.

"This is the big decision," said Bev DeMello, PSC spokeswoman in Tallahassee.

The PSC staff recommended to the commission last week that it stick with customers paying equal rates, because that structure helps finance improvements and operations for all of SSU's 127 systems, some of which are dilapidated, DeMello said.

An alternative recommendation was made to place a cap on the SSU rate increase by adding $2 per month for water and $5 for wastewater to the old rates for each of the SSU systems, she said.

Spring Hill customers would pay less under a cap than under a uniform rate. Instead of paying $4.21 more each month, customers would pay $2.03 more for 10,000 gallons of water, the average consumption for a two-person household.

Tallahassee lawyer Michael Twomey, who has been retained by Citrus and Hernando counties to fight the uniform rate structure, said subsidies are wrong.

"It is an illegal tax. It is unfair, illegal, illogical and dishonest to an extreme," Twomey wrote in an Aug. 10 memo to Hernando County Commission Chairwoman June Ester.

The uniform rate turns into a $2-million subsidy that Spring Hill customers pay to support other systems, he said. The customers should not pay for quality problems outside their system.

"The fact that some people . . . chose to locate in barrier islands or near the coast where there's lousy water quality and expensive treatments isn't the fault of the people of Hernando County," Twomey said.

As an example of the unfairness of uniform rates, he pointed to Gospel Islands Estates, a development in Citrus County. Under the stand-alone rate structure, residents there paid $155.85 for 10,000 gallons of water per month, according SSU rate schedules. Under a uniform rate, that

Please see **RATES** Page 5

Rates from Page 1

same customer pays $17.15.

Some officials in Hernando think the uniform rate is illegal because the public was not told about it before the PSC voted in February 1993. Despite public opposition, the uniform rates kicked in seven months later.

"I attended the public hearing in 1992, and there was no indication there would be a statewide rate," said state Sen. Ginny Brown-Waite, R-Spring Hill. "The proposed rates before us were stand-alone rates, not statewide. It's a question of due public notice."

The PSC has contended that it followed proper notifcation procedures and did nothing wrong.

The PSC decided to reconsider the rate case after widespread opposition from Spring Hill and residents of Sugarmill Woods in Citrus County. In March and April, public hearings were held all over the state to gather opinions from customers.

DeMello, the PSC's spokeswoman, said the commission has received 1,412 letters from customers about uniform rates. Of those, 447 favored uniform rates, 163 wanted stand-alone rates and the remaining people did not express an opinion, she said.

Stand-alone rates for each SSU system cannot cover the "exorbitant" costs to maintain and operate SSU's systems, DeMello said. Customers do not suffer "rate shocks" under uniform rates.

"That goes back to affordability for all Southern State rate-payers," she said. "PSC's job is to maintain the quality of service at the lowest rates possible."

DeMello said she does not know how the five-member commission will vote Thursday.

"They're going to have to make a decision one way or another," she said. "They could come up with some other alternatives."

Members of the public probably will not be allowed to make comments because public hearings have been held to record their opinions for the PSC board.

However, Twomey is encouraging SSU customers to attend the PSC's decision-making session Thursday, as well as a Wednesday news conference in Tallahassee with Hernando County commissioners.

"My idea is to put the eyes of the state on the PSC's decision," Twomey said. "I want the spotlight to be on these people, so they don't make this decision in the dark, without public scrutiny."

The PSC will meet at 9:30 a.m. Thursday in Room 106 of the Fletcher Building, at Gaines and Monroe streets in Tallahassee.

EXHIBIT "B"

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CLIPPING BUREAU OF FLORIDA
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CLEARWATER, FLORIDA 34630-8159

ST. PETERSBURG TIMES
DAILY - - 500,000

AUG 19 1994

PSC sticks to challenged utility rate structure

■ Citrus and Hernando officials fume over the decision that means some will pay more, others less. Hernando may appeal.

By LEANORA MINAI
Times Staff Writer

TALLAHASSEE — Over two months in 11 cities last spring, the state Public Service Commission spent 27 hours listening to residents complain about a uniform rate structure the commission had approved for Southern States Utilities.

Apparently, commissioners didn't buy the residents' arguments.

The PSC on Thursday upheld the controversial water and sewer rate structure it agreed to reconsider last year.

The decision to stick with a statewide uniform rate structure instead of a stand-alone system turns some SSU customers into winners and others into losers.

Some consumers will pay more for water and sewer service; others will pay much less.

"This is a decision based on laziness, dishonesty and stupidity," barked Tallahassee lawyer Michael Twomey, who has been hired by Hernando and Citrus counties to fight the flat rate.

Twomey, who earns $135 an hour, said he will recommend that Hernando commissioners appeal the PSC's ruling in court. Citrus County appealed the PSC's original March 1993 ruling to the 1st District Court of Appeal late last year.

The PSC staff recommended to the commission last week that customers continue paying equal rates because the structure is more affordable to customers and helps finance repairs and operations for SSU's 127 systems, some of which are dilapidated.

Stand-alone rates are determined by the costs for each system to provide utility services, and each system's rates are different.

The losers from Thursday's decision are SSU customers in Spring Hill and in Sugarmill Woods in Citrus County, said Twomey and Hernando commissioners. Hernando's five commissioners and several Citrus residents attended the PSC's meeting, but discussion was limited to the PSC and its staff because members of the public had the chance to speak in March and April.

"They got screwed, and they didn't get kissed," Hernando commission Chairwoman June Ester said of Hernando and Citrus residents after the 3-1 vote.

"I can tell you that what I saw today was highway robbery in broad daylight without a gun," quipped Hernando Commissioner Nancy Robinson.

"My reaction is extreme disappointment," said Cliff Livingston, a Sugarmill Woods resident. "The name of the body is the Public Service Commission. This decision does not render any service to the general public."

The PSC's decision means SSU customers throughout the state will continue paying $17.15 per month for 10,000 gallons of water, regardless of where they live or how expensive repairs or water quality improvements are for their systems.

The decision means Spring Hill's 26,000 customers will pay an additional $4.21 per month for 10,000 gallons of water. The flat rate takes nearly $2-million from Spring Hill customers and gives it to SSU to subsidize improvements and operational costs at other plants.

Sugarmill Woods customers will pay $6.04 more for water each month. Their subsidy to other SSU systems will be $600,000.

"Clearly, those systems are subsidizing to a greater degree than other systems," said Suzanne Summerlin, a PSC staff attorney. "The point is next year there may be other systems subsidizing them.

"The givers and the takers of the subsidies will be different over time."

Some SSU customers have received a massive price break, and that leaves a bad taste in the mouths of some Hernando officials.

For example, consumers who are part of the system in affluent Marco Shores, south of Naples, have gone from paying $44.83 per month for 10,000 gallons of water to paying $17.15 under the uniform rate.

"The people of Spring Hill are now subsidizing their water bills," Ester said.

Although a majority of the PSC commission says uniform rates are more affordable for customers than stand-alone charges, the chairman disagreed.

J. Terry Deason was the only PSC commissioner who voted against the uniform rate because he said it was not equitable.

"I don't think we have enough homogeneity to put blinders on and say we're going to ignore the cost differences and go to uniform rates," Deason said.

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PSC commissioners Diane K. Kiesling, Susan F. Clark and Julia J. Johnson favored the uniform rate structure because it spreads the cost of system improvements among all customers, making rates affordable for everyone, not just a few systems, they said.

Under a stand-alone structure, rates are based on the cost of service alone. Those rates become very high and unaffordable when customers in a single system must bear the entire cost for improvements to their plant, the PSC staff said.

Johnson said she has a duty as a PSC commissioner to protect the health, safety and welfare of residents, and that stand-alone rates do not satisfy the public interest.

"Are these rates for our citizens as a whole affordable?" she asked. "Everything that's been presented comes down to stand-alone (is) not affordable."

The PSC commissioners are appointed by the governor and serve four-year terms at $92,727 a year.

Ester said Hernando county commissioners will consider Twomey's recommendation to appeal the PSC's ruling. But an appeal may be unnecessary because Hernando may take over regulation of SSU's rates, another matter that is in court, she said.

"We have to look at the cost factor," Ester said. "Is it going to get us anywhere?"

Twomey has been paid $20,531 by Hernando for representation in the PSC/SSU matter from October through February. Hernando's position is that the PSC acted illegally by not basing rates on the cost of service for each SSU system, a fair method, he said.

"An elected commission accountable to the voters of the state would not have done this," Twomey said after the PSC's decision. "Those people are not accountable to anybody, and that's the problem."

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PSC upholds uniform rate for water use

Officials say plan could drain county residents

By KEVIN METZ
Tribune Staff Writer

TALLAHASSEE — More than 50,000 Spring Hill residents will continue paying more for water after the Public Service Commission Thursday ruled in favor of a utility company's one-charge-fits-all rate plan.

In the case of Southern States Utilities, which serves about 26,000 customers in Spring Hill and 150,000 statewide, the PSC ruled that charging an average rate protects the consumers and makes water affordable to everyone.

But Hernando County officials contend Southern States' system is illegal because it forces Spring Hill residents to subsidize other communities' water use and disregards the relatively low cost of providing water to Hernando.

"There are people in Hernando County who are going to pay $85 more a year and there was no consideration whether that was affordable to them," said county Commissioner Nancy Robinson.

Southern States charges a uniform rate of $17.15 per month for 10,000 gallons of water, but it only costs $12.94 — including profit — to provide the service in Spring Hill.

Without the uniform rate, residents of places such as Gospel Island could be paying more than $150 a month for water.

After holding almost a dozen public hearings around the state, the PSC voted 3-1 to continue the uniform-rate plan imposed in May 1993. PSC Chairman Terry Deason voted against continuing, saying rates should reflect the actual cost.

PSC members argued the plan would also protect customers from "rate shock" when the company builds new treatment plants or upgrades its equipment, since the cost is shared by more people.

"Over the long term, basically every system is going to be able to benefit because every citizen's helping pay for the environmental changes," said PSC staff supervisor Joann Chase.

PSC staff members and Southern States' officials said forcing the company to set individual rates for 127 communities would ultimately cost more for paperwork and legal fees.

But that doesn't justify charging far more than the service costs, Deason said.

"Sometimes the most simple way is not the fairest," Deason said.

> **"This [PSC ruling] is a decision that's based on a combination of laziness, dishonesty and stupidity."**
>
> MIKE TWOMEY
> Attorney representing Hernando

Hernando County commissioners who traveled to Tallahassee for the hearing and Mike Twomey, an attorney representing the county, vowed to appeal.

"This is a decision that's based on a combination of laziness, dishonesty and stupidity," Twomey said. "It's their job to set rates for everybody."

PSC members reasoned the $17.15 rate was affordable because it was about equal to 2 percent of the median U.S. household income. Twomey said that formula was flawed and not a legal basis for determining rates.

As PSC members and staff discussed Southern States' rate structure, the upset Hernando delegation huffed, snorted and paced in the back of the hearing room.

Hernando County Commissioner June Ester said the county would consider other ways to lower the rates, including taking over the utility through eminent domain or taking over its regulation — thereby removing PSC as the regulator.

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Pressure on PSC

Locals work to get commissioners elected rather than appointed

By Michael D. Bates
Staff Writer

SPRING HILL — Saying that 24,000 Southern States Utilities (SSU) customers in Spring Hill got "screwed" in a recent rate hike case, attorney Mike Twomey is enlisting local help to have Public Service Commission (PSC) members elected instead of appointed.

Twomey, hired by Hernando and Citrus counties to investigate the SSU case, said he will urge county commissioners to launch a petition drive, prodding state officials to change the PSC from an appointed board to an elected one.

"If I can't get anybody else to help me, I'll do it myself," Twomey said.

Twomey is also taking his crusade to the people. Speaking before the Spring Hill Civic Association and a Citrus County Rotary Club last week, Twomey urged voters to contact gubernatorial candidates before next week's primary and express their concern.

"The appointed PSC has been an abject failure," Twomey said earlier this week.

Since 1978, PSC members have been appointed to four-year terms by the governor.

On Aug. 18, the PSC voted 3-1 to keep statewide uniform rates

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SSU

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for SSU customers in all 127 systems. The abolishment of the former stand-alone rate structure increased water and sewer bills of SSU customers in Spring Hill an average $85 more per year, according to County Commissioner Nancy Robinson.

Twomey said the PSC's decision was based on "laziness, dishonesty and stupidity." An elected PSC, he said, would be more accountable to the voters.

SSU collects more than $2 million per year from its Spring Hill system, according to county estimates.

Spring Hill ratepayers got "screwed out of $2 million bucks with the promise of more [unfair rate collection] to come," Twomey said.

Commissioners in March voted to break with the PSC and become the sole regulator of SSU and the county's other investor-owned utilities. The SSU filed a

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