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February 9, 1999

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

HAND DELIVERY

RECEIVED-FPSC
99 FEB 12 PM 3:11
RECORDS AND REPORTING

Re: Docket No. 950495-WS

Dear Ms. Bayo:

Enclosed herewith for filing in the above-referenced docket on behalf of Florida Water Services Corporation are the original and fifteen copies of Florida Water's Answer to Sugarmill Woods' Petition for Formal Hearing. Also enclosed is a disk containing the document formatted in Word Perfect 6.

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.

RECEIVED & FILED

FPSC-BUREAU OF RECORDS

Sincerely,

Kenneth A. Hoffman

Kenneth A. Hoffman

- ACK _____
- AFA 3
- APP _____
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- LEG 2 Enclosures
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- OTH _____

DOCUMENT NUMBER-DATE

01856 FEB 12 99

FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application by Southern)
States Utilities, Inc. 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, Highlands,)
Lake, Lee, Marion, Martin,)
Nassau, Orange, Osceola, Pasco,)
Polk, Putnam, Seminole, St. Johns,)
St. Lucie, Volusia and Washington)
Counties.)
_____)

Docket No. 950495-WS

Filed: February 12, 1999

**FLORIDA WATER SERVICES CORPORATION'S ANSWER
TO SUGARMILL WOODS' PETITION FOR FORMAL HEARING**

Florida Water Services Corporation ("Florida Water"), by and through its undersigned counsel, and pursuant to Rule 28-106.203, Florida Administrative Code, hereby files its Answer to the Petition for Formal Hearing filed by Sugarmill Woods Civic Association, Inc. ("Sugarmill Woods"). Having failed to allege a disputed issue of material fact, the legal issues raised in Sugarmill Woods' Petition should be addressed in a Section 120.57(2), Florida Statutes, informal administrative proceeding, and the relief sought by Sugarmill Woods should be denied. As grounds for its Answer to Sugarmill Woods' Petition, Florida Water states as follows:

1. The Petition filed by Sugarmill Woods challenges the procedure set forth in the Commission's proposed agency action decision for the collection of surcharges as a result of the court's reversal of Commission determinations concerning the ratemaking treatment for reuse facilities, an adjustment to Florida Water's common equity, and admitted errors in the calculation of used and useful for three wastewater treatment plants. See Southern States Utilities v. Florida

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

Public Service Commission, 714 So.2d 1046 (Fla. 1st DCA 1998) (hereinafter "Southern States II").

The Commission authorized Florida Water to collect surcharges to recover the revenue which Florida Water should have been authorized to collect had the Commission properly and lawfully addressed these three issues in the Final Order. The Commission approved a proposed surcharge methodology under which Florida Water would calculate surcharges due using the same base facility surcharge of \$.12 per month for water customers and \$1.53 per month for wastewater customers for that portion of the 27 month appeal and remand period that each customer was served by Florida Water. The Commission orders Florida Water to collect the surcharge from water customers as a one time charge while the surcharge from wastewater only customers and water and wastewater customers are to be collected in equal installments over six months, plus interest and finance charges.

Finally, the Commission determined that it is:

... appropriate to require Florida Water to use its best business judgment to expend a reasonable amount of effort and expense to locate the prior customers who were customers during the time the incorrect rates were in place and to collect these funds from them in the amount of their individual liabilities. To the degree the utility is unable to collect the surcharge owing from these prior customers, the utility may petition us for a mechanism to recover the uncollectible amount.

Order No. PSC-99-0093-FOF-WS issued January 15, 1999, at 26 (this order, together with Order No. PSC-99-0093A-FOF-WS issued February 19, 1999, are hereinafter referred to collectively as the "Surcharge Order").

2. Sugarmill Woods challenges the Commission's Surcharge Order and requests approval of surcharges "based solely upon either Sugarmill Woods' stand-alone revenue increase as a result only of the equity adjustments compelled by the Court's reversal, or surcharges based

upon the stand-alone revenue increases flowing from the equity adjustment and incorporated in the Court-approved capband rate structure."¹

3. Rule 28-106.201, Florida Administrative Code, outlines the pleading requirements for a petition for formal hearing involving disputed issues of material fact under Sections 120.569 and 120.57(1), Florida Statutes. Subsection (2)(d) of Rule 28-106.201 requires the petition to include a statement of all disputed issues of material fact.

4. Sugarmill Woods' Petition should be addressed in the same manner with which the Commission resolved the Office of Public Counsel's ("OPC") petition for formal administrative hearing in the GTE Remand proceeding in Docket No. 920188-TL. In the GTE Remand proceeding, following the reversal by the court in the GTE Florida decision² and the remand to the Commission, the Commission issued a proposed agency action order requiring surcharges. That order was protested by OPC pursuant to the filing of a petition for a Section 120.57(1) formal administrative hearing. GTE filed a motion to dismiss OPC's petition for a Section 120.57(1) hearing. Upon consideration, the Commission denied GTE's motion to dismiss and set the matter for a Section 120.57(2) informal hearing:

Since there do not appear to be any disputed issues of material fact, OPC's request for a hearing under Section 120.57(1), Florida Statutes, is denied. However, since there do appear to be disputed issues of law, especially with regard to the appropriate interpretation of the Court's decision, we find it appropriate to set this matter for a proceeding under Section 120.57(2), Florida Statutes. GTEFL and OPC may present briefs regarding the appropriate interpretation of GTE Florida Inc. v. Clark, 21 F.L.W. S101, 1996 Fla. SCT 395 (February 29, 1996).

¹Sugarmill Woods' Petition, at 9.

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

In Re: Application for a rate increase by GTE Florida Incorporated, 96 F.P.S.C. 8:108, 112 (August 7, 1996).

5. As in the GTE Remand proceeding, Sugarmill Woods' Petition fails to present any disputed issue of material fact and raises only questions of law.³ Although Sugarmill Woods did not challenge the Commission's legal determination that surcharges are analogous to charges rather than rates,⁴ Sugarmill Woods alleges that the Commission has unlawfully utilized a uniform rate structure to collect surcharges in violation of the Southern States II decision and criticizes the Commission for failing to impose surcharges pursuant to the capband rate structure.⁵

6. The GTE Remand final order and the surcharge mechanism ordered therein confirm that the methodology for collection of surcharges need have no relationship whatsoever to the Commission-approved rate structure for monthly service rates.⁶ Florida Water disagrees with Sugarmill Woods' assertion that the Commission's proposed surcharge collection methodology unlawfully and unconstitutionally deprives Sugarmill Woods of its property. Finally, Florida Water

³Sugarmill Woods' Petition fails to allege any disputed issue of material fact. On page 5 of its Petition, Sugarmill Woods argues that the Commission's decision does not allocate a "fair" pro rata share of surcharge liability to Sugarmill Woods. This is not a disputed issue of fact but merely argument and expression of dissatisfaction with the Commission's decision. Sugarmill Woods also argues that the Commission's proposed surcharge methodology is an unlawful and unconstitutional deprivation of Sugarmill Woods' property, and that the Commission's proposed surcharge methodology violates the court's affirmation of Florida Water's prior uniform rate structure in Southern States II. These are simply legal arguments challenging the Commission's proposed surcharge decision.

⁴See Order No. PSC-99-0093-FOF-WS, at 27.

⁵See Order No. PSC-99-0093-FOF-WS, at 27.

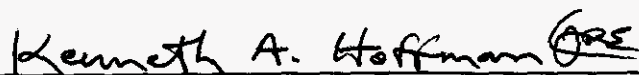
⁶In Re: Application for a rate increase by GTE Florida Incorporated, 96 F.P.S.C. 5:316 (May 17, 1996); 96 F.P.S.C. 10:165 (October 8, 1996).

disagrees with Sugarmill Woods' mischaracterizations of the court's decision in Southern States II.

7. The willingness of Sugarmill Woods to express its displeasure with the Commission by labeling the Commission "dishonest" and accusing the Commission of engaging in "willful and knowing misstatement of the facts"⁷ is no substitute for a legally sufficient petition which satisfies the statutory and rule requirements for a formal hearing. Addressing the legal issues raised by Sugarmill Woods through an expedited Section 120.57(2) proceeding will benefit all ratepayers by limiting the interest on surcharges which continues to accrue.

WHEREFORE, Florida Water requests that the Commission deny Sugarmill Woods' Petition for formal hearing and schedule Sugarmill Woods' petition for an informal hearing pursuant to an expedited briefing schedule.

Respectfully submitted,



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⁷Sugarmill Woods' Petition, at 5, 8.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was furnished by U. S. Mail to the following on this 12th day of February 1999:

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