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SSU
Southern States Utilities • 1000 Color Place • Apopka, FL 32703 • 407/880-0058

July 12, 1995

By Hand

Mr. Chuck Hill
Director of Water & Wastewater
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

Re: Docket No. 950495-WS: Southern States Utilities, Inc.

ACK ✓
AFA Vandiver
APP
CAF
CMU
CTR
EAG
LEG 1
LIN 5
OPC 1
RCH
SEC 1
WAS Willis
OTH 1

Dear Mr. Hill:

By this letter, SSU requests that Staff reconsider its initial position that the absence of our service areas located in Hernando, Hillsborough and Polk Counties from the application and MFRs in the above-referenced proceeding constitutes a deficiency in the MFRs. Needless to say, the Commission's June 19 decision in Docket No. 930945-WS has not yet been incorporated into a written order and no party has had the opportunity to challenge the Commission's decision either in court or through a request for reconsideration. We have been assured by counsel for Hernando County both prior and subsequent to the Commission's June 19 vote that the County would appeal a Commission order establishing Commission jurisdiction over SSU's land and facilities in Hernando County.

SSU would like to be clear that we applaud the Commission's June 19 decision and reaffirm our current operation of one utility system throughout Florida. Sole Commission jurisdiction over SSU will contribute to efficient utility operations and equitable treatment of customers and SSU alike. However, the certainty of requests for Commission reconsideration or immediate appeal to the First District Court of Appeals indicates that it is premature to include the service areas in Hernando, Hillsborough and Polk Counties in this proceeding. We also are aware of no portion of the Commission's rules pertaining to minimum filing requirements that address the indicated deficiency.

Rather, we have reviewed the transcript of the Commission's May 17, 1994 consideration in Docket No. 930945-WS of SSU's emergency petition for Commission jurisdiction over SSU's land and facilities in Hernando County. We believe that the transcript at pages 44 and 45 contains a cogent expression of the views of Chairman Clark and Commissioner Kiesling of the

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preferred conduct of the parties, including the Commission, from the time of the Commission's decision in that docket through any prospective appeal. The cited portion of the transcript provides as follows:

> COMMISSIONER CLARK: ...I have concerns about our ability to assert interim jurisdiction, but it seems to me that all parties ought to work to maintaining a status quo. We don't need to jerk the customers of this utility around. We need to provide some efficiency in the way the state and local governments function. And I think we need to cooperate in determining the jurisdiction, and then moving forward from there. And I would hope to gain the cooperation of Hernando County as we go through this proceeding to follow the appropriate procedural steps and have the case decided, and then, if necessary, have it appealed. But that's with the understanding that if we find that there is -- that if there arises in the future some need for us to take action, such as intervention in the court case -- I mean, I think we need to do that, to go through the proper legal steps to decide who does have jurisdiction. And I don't want that -- I hope it's not interpreted by Hernando County as a grab for jurisdiction, because we certainly have enough to do. It's just a matter of us carrying out the legislative mandate handed to each one of us as we embark upon being utility commissioners. And with that I would move approval of Staff's recommendation.
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> COMMISSIONER JOHNSON: Second.
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> CHAIRMAN DEASON: Moved and seconded.
>
> COMMISSIONER KIESLING: I was going to second it and second the comments, but I was beaten to the second, but I echo the comments. [Emphasis Added].

We believe the views expressed by Chairman Clark and joined by Commissioner Kiesling contemplate adherence to the status quo until a Court has reviewed the Commission's June 19 jurisdictional determination. The "jerking around" of customers is a possibility if SSU is required to include the disputed service areas as part of the application and MFRs and the Court subsequently reverses the Commission's June 19 decision. SSU's position in this regard seeks to avoid such a result.

Also, it is not clear to SSU that either the Commission's determination of jurisdiction over the disputed service areas or the First District Court of Appeals' April 6 decision in the 1992 rate case appeal mandate that all service areas which comprise a system be included in a uniform rate. We suggest that the Commission would be justified in processing SSU's application and MFRs, as filed, with consideration of the propriety of including the disputed service areas in an appropriate service classification, uniform conventional treatment, uniform reverse osmosis or

some other appropriate service classification, in a subsequent ratemaking proceeding after a final, non-appealable order is issued by the Commission or a court of last resort. In this regard, we reaffirm that SSU's application and MFRs seek to recover only the revenue requirements associated with the Company's service to customers in the service areas included in the filing.

We also note that an appeal of the Commission's June 19 decision could not be expected to be completed prior to the running of the eight month or even twelve month rate suspension periods provided in the Florida Statutes. Under the Florida Statutes, SSU would be entitled to collect final rates, not subject to refund and in an amount sufficient to recover SSU's revenue requirements for the included service areas, upon the expiration of those suspension periods. If an appeal of the Commission's jurisdiction to even set such rates for the disputed service areas remains pending at the expiration of the suspension periods, what will occur? The Commission must abide by its statutory authority and we do not believe that any authority exists for the Commission to indefinitely postpone establishing new rates for SSU's service areas in the three counties at issue until the appeal is resolved. Similarly, if the service areas in Hernando, Hillsborough and Polk Counties are included in this proceeding, interim rates would be required for these service areas. If interim or final rates are authorized by the Commission in the service areas subject to dispute, and the court reverses the Commission's jurisdictional determination, unlike other ratemaking decisions where no refund liability will attach, SSU could face an underrecovery of revenues. This potential exists because the Court will have determined that the Commission never had jurisdiction over the service areas and, thus, it is possible that the rates and associated revenues collected thereunder from customers in the disputed service areas would be void ab initio. Given the magnitude of the risk to which SSU would be exposed, it is questionable whether it would be prudent for SSU to request that the Commission vacate the automatic stay which Commission precedent suggests would apply upon the filing of Hernando County's appeal.

Please know that SSU is prepared to provide the Commission and Staff with information regarding the service areas in Hernando, Hillsborough and Polk Counties. We understand Staff's desire to "see the whole picture" in this proceeding. The inclusion of the disputed service areas would increase SSU's requested revenue requirements by approximately $400,000. Inclusion of this additional revenue would result in the first time in many years that total Company revenue requirements would be reflected in rates. However, for the reasons stated earlier in this letter, we believe that the application and MFRs, as filed, are not deficient and the inclusion of the disputed service areas would be premature.

Finally, SSU's MFRs reflect the fact that in 1994, SSU earned less than 1% on the equity invested in plant in service. The MFRs also reflect that SSU will not be able to cover its debt costs (in other words, SSU will experience negative returns on equity) in the projected years 1995 and 1996 under current rates. Given the financial pressures currently confronting SSU, we request that you please consider the facts and arguments raised in this letter on an expedited basis. The preparation and incorporation of the information from the disputed service areas, particularly regarding rate design, would be a labor intensive and time consuming process which

we fear would be for naught given the situation as described in this letter.

We sincerely appreciate your anticipated consideration of our request that you reconsider and withdraw the indicated deficiency concerning the disputed service areas. If you are unable to withdraw this suggested deficiency, we request that Staff present this issue to the Prehearing Officer or, if necessary, to the Chairman or the full Commission in the most expeditious manner possible. Of course, we will remain available to discuss this matter with you and/or your staff as well as to present our position to the Prehearing Officer or the Commission at your earliest convenience and in a manner in accord with applicable rules. We will be available in Tallahassee on July 12 and 13 for such purpose if the Prehearing Officer consents to an emergency hearing on this issue. Thank you again for your consideration of these requests.

Very truly yours,

Brian P. Armstrong
General Counsel

and

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cc By Hand:
Lila Jaber, Esq.

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