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October 23, 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 No. 950495-WS

Dear Ms. Bayo:

Enclosed herewith for filing in the above-referenced docket on behalf of Southern States Utilities, Inc. ("SSU") are the original and fifteen copies of SSU's Answer to Hillsborough County's Petition for Formal Administrative Hearing.

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,

Bill Willingham for
Kenneth A. Hoffman

KAH/rl

cc: All Parties of Record

Tr. 3

- ACK
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DOCUMENT NUMBER-DATE
10436 OCT 23 95
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 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.)

Docket No. 950495-WS

Filed: October 23, 1995

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SSU'S ANSWER TO HILLSBOROUGH COUNTY'S
PETITION FOR FORMAL ADMINISTRATIVE HEARING

SOUTHERN STATES UTILITIES, INC., ("SSU") by and through its undersigned counsel, and pursuant to Rule 25-22.037(1), Florida Administrative Code, hereby files this Answer to Hillsborough County's Petition for Formal Administrative Hearing (the "Petition") served by Hillsborough County ("Hillsborough") September 26, 1995. In support of this Answer, SSU states as follows:

1. The Commission should find Hillsborough's Petition moot, since the Commission voted on October 13, 1995, to exclude SSU's water and wastewater operations in Polk, Hillsborough, and Hernando Counties ("the Additional Counties") from the instant rate proceeding. As a result of said vote, Hillsborough no longer has a substantially affected interest in the outcome of this proceeding, and the Petition would be moot even if the instant Petition is deemed merely a petition to intervene.

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2. In the event the Commission does not consider Hillsborough's Petition moot, SSU submits that the Commission should reject Hillsborough's request for a hearing solely on the issue of whether the Commission properly decided the minimum filing requirements ("MFRs") could only be met by SSU's filing information on its operations in the Additional Counties.

3. The question of whether agency action affects a person's substantially interests, thereby entitling the person to an administrative hearing, is evaluated by the same standard by which a person's standing to participate in an agency proceeding is evaluated. Fairbanks, Inc. v. Department of Transportation, 635 So.2d 58, 59 (Fla. 1st DCA 1994).

This . . . requires a showing that (1) the proposed action will result in injury-in-fact which is of sufficient immediacy to justify a hearing; and (2) the injury is of the type that the statute pursuant to which the agency has acted is designed to protect.

Id. at 59 (citations omitted). Hillsborough fails to satisfy either prong of this test.

4. Contrary to Hillsborough's claim, a person does not sustain injury-in-fact by an agency's decision to initiate a proceeding which may affect a person's interest. Were this true, a utility would be entitled to a hearing every time the Commission so much as opened up a docket involving that utility. Instead, a person may sustain injury-in-fact only by the agency's decision affecting the person's interest at the conclusion of a proceeding or by proposed agency action. The Commission's decision regarding SSU's MFRs is neither of these. The Commission's decision

concerned SSU's compliance with the Commission's MFR rules and the Commission's interpretation of applicable case law at the time the Commission made its decision.¹ As a rhetorical point, SSU submits that it could have refused to file the Additional County information and, perhaps never had an official date of filing established; yet, by Hillsborough's logic, the Commission's MFRs decision would be agency action entitling Hillsborough to a hearing just the same. Accordingly, the only potential injury-in-fact Hillsborough may suffer would be at the conclusion of this proceeding.

5. The Commission's determination that a utility has met the MFRs and the Commission's concomitant establishment of an official date of filing is not the type of action designed to protect Hillsborough from the injury it claims. Hillsborough asserts nothing more than a right to be free from administrative litigation. Section 367.083, Florida Statutes, the statute pursuant to which the Commission determined the sufficiency of SSU's MFRs, is exclusively designed to establish a mechanism for a suitable starting point for the eight and twelve month clocks of Section 367.081, Florida Statutes. Moreover, as explained in SSU's September 9, 1995, Response to OPC's August 29 Motion to Dismiss, the Legislature did not intend party participation in the Commission's determination of the MFRs and an official date of


¹ At its August 1 Agenda Conference, the Commission recognized that the stay upon which Hillsborough relies here was not yet in effect as no notice of appeal in Docket No. 930945-WS had been filed.

filing. An official date of filing must by law be determined swiftly, without interference from those who would cause unreasonably delay to a utility's right to earn a fair rate of return. Therefore, in accordance with the foregoing, Hillsborough has failed to establish that the Commission's MFR decision satisfies the second prong of the aforementioned test for agency action which requires a hearing upon request from an interested person.

6. SSU admits the factual averments in paragraphs 1, 3, 4, 8, 9, 10, and 11 of the Petition. SSU also admits that Hillsborough County is an SSU customer. SSU denies or is without knowledge as to the remaining averments. Paragraphs 5, 6, and 7 of the Petition are not completely accurate statements of the law. Contrary to Hillsborough's statement in paragraph 5, the Commission decision referenced is final. The stay imposed by virtue of Rule 1.310(b)(2) of the Florida Rules of Appellate Procedure suspends, but does not undo the referenced Commission decision. See City of Plant City v. Mann, 400 So.2d 952 (Fla. 1981).

WHEREFORE, in consideration of the foregoing, Southern States Utilities, Inc. requests that the Commission deny Hillsborough County's Petition for Formal Administrative Hearing as moot or, in the alternative, deny the relief sought in the Petition for the reasons herein stated.

Respectfully submitted,


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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Response to Citizens' Motion for Reconsideration was furnished by U.S. Mail to the following this 23rd day of October, 1995:

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