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March 19, 1996

**ORIGINAL**  
GOVERNMENTAL CONSULTANTS  
**FILE COPY**  
PATRICK R. MALOY  
AMY J. YOUNG

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**

Re: Docket No. ~~950495-WS~~

Dear Ms. Bayo:

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

1. Original and fifteen copies of SSU's Response in Opposition to March 12th Motion to Dismiss and Request for Evidentiary Hearing; and
2. A disk in Word Perfect 6.0 containing a copy of the Response entitled "Mdismiss."

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*  
Kenneth A. Hoffman

ACK  
 AFA 3  
 APP  
 CAF  
 CMU  
 CTR KAH/rl  
 EAG  
 LEG 1  
 LIN 5 Trib.3  
 OPC  
 RCH  
 SEC 1  
 WAS *Willis*  
 OTH

cc: All Parties of Record

RECEIVED & FILED

*Willis*  
EPSC-BUREAU OF RECORDS

DOCUMENT NUMBER-DATE  
03245 MAR 19 96  
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: March 19, 1996



**SSU'S RESPONSE IN OPPOSITION TO  
MARCH 12TH MOTION TO DISMISS  
AND REQUEST FOR EVIDENTIARY HEARING**

SOUTHERN STATES UTILITIES, INC. ("SSU"), by and through its undersigned counsel, and pursuant to Rule 25-22.037(2)(b), Florida Administrative Code, hereby files its Response in Opposition to the Motion to Dismiss and Request for Evidentiary Hearing filed on March 12, 1996 by the Office of Public Counsel ("OPC"); the Amelia Island Community Association, Residence Condominium, Residence Property Owners Association, Amelia Retreat Condominium Association, Amelia Surf and Racquet Property Owners Association and Sandpiper Association; the Concerned Citizens of Lehigh Acres; Sugarmill Woods Civic Association, Inc.; Spring Hill Civic Association, Inc.; Marco Island Civic Association, Inc.; Harbour Woods Civic Association; and, the Board of Supervisors of the East County Water Control District. In support of its Response, SSU states as follows:

DOCUMENT NUMBER-DATE

03245 MAR 19 7673

FPSC-RECORDS/REPORTING

## Introduction

1. The March 12th Motion to Dismiss is but the latest of OPC's efforts, joined by the other Intervenors, to distract this Commission from the merits of this rate case. The Commission is asked to rule on what amounts to the Ninth Motion to Dismiss this rate case. Once again, as in the past, there is no factual or legal basis to dismiss the case. Once again, as in the past, OPC offers no applicable legal precedent which would support dismissal of the case.

2. The March 12th Motion to Dismiss, premised on SSU's alleged misconduct, is frivolous. Having lost eight previous motions to dismiss (including two motions to reestablish the official date of filing), OPC and the other Intervenors persist in running up the tab on SSU's ratepayers (and their own clients) with yet another motion to dismiss which has no basis in fact or law. OPC's fondness for motions to dismiss should not be taken lightly. Each motion to dismiss filed by OPC in this proceeding, no matter how unsubstantiated, places SSU at significant risk requiring SSU to research the law which may apply to OPC's allegations, prepare a response and argue the points before the Commission. There is no question that OPC has needlessly increased the costs of litigating this rate case and continues to do so with the March 12th Motion to Dismiss. This type of conduct should not be condoned by the Commission.

3. Specifically, OPC previously has asked the Commission to dismiss this rate case on the following occasions:

a. August 29, 1995 - OPC's First Motion to Dismiss and/or Reestablish Official Date of Filing. The motion was denied.<sup>1</sup>

b. August 30, 1995 - OPC's First Motion to Dismiss SSU's Request for Interim Increase in Rates. The motion was denied.<sup>2</sup>

c. September 8, 1995 - OPC's Second Motion to Dismiss. The motion was denied.<sup>3</sup>

d. September 14, 1995 - OPC's Third Motion to Dismiss. The motion was denied.<sup>4</sup>

e. September 22, 1995 - OPC's Fourth Motion to Dismiss. The motion was denied.<sup>5</sup>

f. October 17, 1995 - OPC's Fifth Motion to Dismiss. The motion was denied.<sup>6</sup>

g. December 4, 1995 - OPC's Motion to Dismiss SSU's Supplemental Petition for Interim Revenue Relief. The motion was denied.<sup>7</sup>

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<sup>1</sup>Order No. PSC-95-1352-FOF-WS issued November 1, 1995.

<sup>2</sup>Order No. PSC-95-1327-FOF-WS issued November 1, 1995.

<sup>3</sup>Order No. PSC-95-1432-FOF-WS issued November 27, 1995.

<sup>4</sup>Id.

<sup>5</sup>Id.

<sup>6</sup>Order No. PSC-95-1568-FOF-WS issued December 18, 1995.

<sup>7</sup>Order No. PSC-96-0125-FOF-WS issued January 25, 1996.

h. December 18, 1995 - OPC's (Second) Motion to Reestablish Official Filing Date. The motion was denied.<sup>8</sup>

4. In addition, OPC has filed two motions to cap SSU's Maximum Interim Rates. Both were denied.<sup>9</sup>

5. Now, once again, joined by other Intervenors, OPC moves to dismiss SSU's Amended Application for Increased Water and Wastewater Rates, etc. In denying the previous motions to dismiss, the Commission has repeatedly stated, and correctly so, that dismissal of a case is a drastic sanction that should be used only in extreme situations and only where the moving party is able to demonstrate meaningful prejudice.<sup>10</sup> For the reasons stated below, the March 12th Motion to Dismiss must be denied.

**Allegations of Ex Parte Contacts**

6. OPC and the other Intervenors argue that SSU has solicited ex parte communications to the Commission which warrant dismissal of this proceeding. There is no basis in fact or law for this assertion.

7. The letter dated December 21, 1995 from Lieutenant Governor McKay to Chairman Clark is attached as Exhibit 1 to the Motion to Dismiss. Exhibit 1 fails to include a letter dated November 21, 1995 from Arend Sandbulte, Chief Executive Officer of

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<sup>8</sup>Order No. PSC-96-0279-FOF-WS issued February 26, 1996.

<sup>9</sup>Order Nos. PSC-95-1327-FOF-WS issued November 1, 1995 and PSC-96-0125-FOF-WS issued January 25, 1996.

<sup>10</sup>See, e.g., Order Nos. PSC-95-1352-FOF-WS, at 3 and PSC-95-1432-FOF-WS, at 4, citing Carr v. Dean Steel Buildings, Inc., 619 So.2d 392 (Fla. 1st DCA 1993) and Neal v. Neal, 636 So.2d 810 (Fla. 1st DCA 1994).

Minnesota Power, to Governor Chiles voicing concerns about the impact on SSU and its customers of the Commission's October 19, 1995 Refund Order in a separate docket (Docket No. 920199-WS)<sup>11</sup>. Lieutenant Governor McKay's letter speaks for itself. It is a follow-up to Mr. Sandbulte's letter to Governor Chiles and specifically requests Chairman Clark to provide "... any information ... on the overall economic and financial consequences facing SSU as outlined in the attached letter so I can respond to Mr. Sandbulte's concerns."

8. Similarly, the letter dated January 2, 1996 from Secretary of Commerce Dusseau to Chairman Clark attached in Exhibit 1 to the Motion to Dismiss speaks to SSU's role as a large water and wastewater utility in Florida, the need for a predictable and stable business and regulatory environment, and specifically asks for the reasoning behind the Refund Order in Docket No. 920199-WS<sup>12</sup> and information regarding any recourse available to SSU.

9. Section 350.042(1), Florida Statutes, states that a commissioner "shall neither initiate nor consider ex parte communications concerning the merits ... in any (s. 120.57) proceeding ...." (Emphasis supplied). The letters from Lieutenant Governor McKay and Secretary Dusseau contain **no information relevant to the merits of this proceeding**. The letters state no position in support of or against any substantive issue or

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<sup>11</sup>Order No. PSC-95-1292-FOF-WS, issued October 19, 1995 in Docket No. 920199-WS.

<sup>12</sup>Id.

Commission action; the letters simply requested information concerning SSU and the rationale behind an order of the Commission issued in a different docket. In sum, the letters do not address the merits of this proceeding and are not ex parte communications as contemplated by Section 350.042(1), Florida Statutes.

10. Although the letters do not address the merits of this proceeding, they were nonetheless treated by Chairman Clark as ex parte communications. Section 350.042(4), Florida Statutes, outlines the procedures to be followed in such cases:

(4) If a commissioner knowingly receives an ex parte communication relative to a proceeding other than as set forth in subsection (1), to which he or she is assigned, he or she must place on the record of the proceeding copies of all written communications received, all written responses to the communications, and a memorandum stating the substance of all oral communications received and all oral responses made, and shall give written notice to all parties to the communication that such matters have been placed on the record. Any party who desires to respond to an ex parte communication may do so. The response must be received by the commission within 10 days after receiving notice that the ex parte communication has been placed on the record.

11. In this case, Chairman Clark meticulously followed the above procedures.

a. By memorandum dated December 28, 1995, Chairman Clark filed the Lieutenant Governor's letter and the attached letter of Mr. Sandbulte in the record of this proceeding with instructions to the Director of the Division of Records and Reporting to provide notice of the letters to all parties in this docket and to inform the parties that they had 10 days from receipt

to file a response. See Exhibit A.

b. By memorandum dated January 3, 1996, Chairman Clark filed Secretary Dusseau's letter in the record of this proceeding with the same instructions outlined above. See Exhibit B.

c. By memorandum dated January 4, 1996, the Director of the Division of Records and Reporting provided copies of the letters to the parties of record in this proceeding with notice that a party desiring to respond could do so within 10 days of receipt thereof. See Exhibit C.

d. By memorandum dated January 5, 1996, Chairman Clark filed a copy of her January 5, 1996 response letter to Lieutenant Governor McKay in the record of this proceeding. See Exhibit D.

e. By memorandum dated January 11, 1996, Chairman Clark filed a copy of her January 11, 1996 response letter to Secretary Dusseau in the record of this proceeding. See Exhibit E.

12. OPC filed no response to the letters at issue. Mr. Twomey filed a copy of his letter dated January 3, 1996 to Lieutenant Governor McKay, a four-page diatribe replete with unsubstantiated allegations concerning SSU and a host of personal invectives directed to Lieutenant Governor McKay, Secretary Dusseau and Mr. Sandbulte. See Exhibit F. Mr. Twomey failed to provide a copy of his January 3 letter to SSU thereby making Mr. Twomey's letter an ex parte communication.

13. Section 350.042(4), Florida Statutes, also sets forth the available remedy concerning an ex parte communication which is determined to be sufficiently prejudicial in terms of its impact on

a commissioner:

The commissioner may, if he or she deems it necessary to eliminate the effect of an ex parte communication received by him or her, withdraw from the proceeding, in which case the chair shall substitute another commissioner for the proceeding.

Simply put, the Legislature has determined that the appropriate remedy for a party prejudiced by an ex parte communication is withdrawal of the commissioner or commissioners allegedly prejudiced by the communication. The intent of the Legislature, of course, is to ensure that all parties before the Commission receive a fair hearing before unbiased commissioners.

14. The remedy available under Section 350.042(4) has been pursued, in effect, by Mr. Twomey and his clients, who have filed a motion requesting the Commission to transfer this proceeding to the Division of Administrative Hearings ("DOAH"). In seeking a transfer of this proceeding to DOAH, the Intervenors represented by Mr. Twomey stop short of alleging that they have been prejudiced by virtue of the letters sent by the Lieutenant Governor and Secretary Dusseau, a sensible admission in light of the fact that, as they put it, "[n]o 'evidence' of any kind has been heard by any Commissioner in this case, let alone all of them."<sup>13</sup> Further, the measures taken by Chairman Clark in placing the letters in the record of this proceeding and allowing all parties an opportunity to respond provides due process protection for any party claiming

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<sup>13</sup>See Motion for Assignment of All Dockets Involving SSU to the Division of Administrative Hearings filed on February 16, 1996, at par. 22.

prejudice (although none have) as a result of the letters.<sup>14</sup>

15. OPC, on the other hand, has made no effort to respond to the letters at issue prior to the filing of the March 12th Motion to Dismiss. The January 4, 1996 memorandum referenced above provided OPC the opportunity to make a record filing asserting their response to the letters at issue. OPC filed nothing. The Intervenors represented by Mr. Twomey then pursued the remedy of transferring this proceeding to DOAH. In response to that Motion, OPC filed nothing. OPC has sat back and elected not to exercise their right to file a response to the letters at issue. OPC has sat back and elected not to join the request of the Intervenors represented by Mr. Twomey to transfer this case to DOAH. Instead, OPC attempts to create its own unsupported remedy, its acknowledged remedy of choice, the Motion to Dismiss.

16. OPC and the other Intervenors devote substantial discussion to the decision in Jennings v. Dade County, 589 So.2d 1337 (Fla. 3d DCA 1991). The Jennings decision made one thing very clear -- a party seeking to establish entitlement to a new hearing due to an ex parte communication **must allege that the ex parte communication caused him prejudice.** Id., 589 So.2d at 1342.<sup>15</sup> The March 12th Motion to Dismiss **contains no allegation that the parties have been prejudiced as a result of the letters from Lieutenant Governor McKay and Secretary Dusseau.** In fact, the

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<sup>14</sup>AGO 94-71.

<sup>15</sup>Indeed, in Jennings, the court remanded the proceeding to permit Jennings an opportunity to amend his complaint to allege prejudice arising from the ex parte communication.

Motion flatly admits that it does not even attempt to establish prejudice when it states:

While the Jennings case focuses on the effect of the ex parte communication on the decision maker, this motion focuses instead on the misconduct of Southern States in attempting to influence the Commission, whether those actions by Southern States were successful or not.<sup>16</sup>

17. The goals sought to be achieved by Section 350.042(4) and the Jennings decision are one and the same -- to ensure that a party prejudiced by an ex parte communication receives a fair hearing before an unbiased tribunal with the due process protections provided under Chapter 120, Florida Statutes. Prejudice must be alleged and proven. The alleged misconduct of a party is irrelevant. If prejudice is alleged and proven, the remedy is either a new hearing if a (tainted) hearing has been held<sup>17</sup> or a new commissioner or commissioners if a hearing has not been held -- **not** dismissal of a pending proceeding which has not yet reached the hearing stage.

18. In sum, OPC and the other Intervenors have failed to even allege the requisite element of prejudice under the Jennings

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<sup>16</sup>March 12th Motion to Dismiss, at par. 9.

<sup>17</sup>In Jennings, the Dade County Commission held a hearing on the zoning application allegedly affecting Jennings after an alleged oral ex parte communication between a representative of the applicant and a member or members of the Dade County Commission. In the instant case, the written communications from the Lieutenant Governor and Secretary Dusseau were submitted to Chairman Clark approximately four months prior to the scheduled final hearing, which has not yet begun, and parties were given an opportunity to provide written responses on the record.

decision. The Motion to Transfer SSU's cases to DOAH and the instant Motion to Dismiss both acknowledge a lack of prejudice and all parties were granted an opportunity to provide a response on the record to the letters at issue over three months before the beginning of the final hearing. Prejudice has not been alleged and cannot be shown. Accordingly, the Motion to Dismiss must be denied.<sup>18</sup>

**SSU has not "interfered" with the Notice to Customers**

19. OPC and the other Intervenors also seek dismissal based on factual misrepresentations that SSU has "interfered" with the Notice to Customers. There is no legal basis for dismissal on this point and none is cited in the Motion to Dismiss. Further, the factual grounds purporting to support the request are inaccurate.

20. The supplemental notices to customers outlined the requested rates under stand-alone, modified stand-alone and uniform rate structures. SSU was ordered to provide this second set of notices to customers by the Commission at the urging of OPC.<sup>19</sup>

21. The supplemental customer notices resulted in numerous inquiries to SSU by customers who were confused by the supplemental customer notice. This customer confusion was confirmed by the

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<sup>18</sup>The references in the Motion to Dismiss to decisions addressing willful disregard of discovery orders are inapposite. See March 12th Motion to Dismiss, at par. 10. The references to these Orders is somewhat ironic in light of OPC's disregard of a December 20, 1995 Order of the Prehearing Officer requiring OPC to provide discovery responses to SSU. See Order No. PSC-95-1571-PCO-WS. The responses were served by OPC over two months later, on February 26, 1996.

<sup>19</sup>Order No. PSC-95-1453-PCO-WS issued November 28, 1995.

testimony of the customers at the second set of customer service hearings.

22. Rather than leave customers confused and "in the dark" regarding the rate increase SSU is requesting in this rate case and the possible rate alternatives depending on the rate structure ultimately ordered by the Commission, SSU elected to educate and inform its customers regarding the possible rate increase scenarios. Incredibly, with the March 12th Motion to Dismiss, OPC and the other Intervenors seek to sanction SSU for its attempts to educate its customers about the ramifications of the different rate structures on potential rate increases.

23. Contrary to the allegations in the Motion to Dismiss, SSU representatives did not state that they already knew how much additional revenue the Commission would grant SSU in this proceeding nor that the Commission "routinely" grants 70% of SSU's request.<sup>20</sup> OPC knows or should know that no such statements were made as OPC has deposed SSU employee Ida Roberts who conducted the meetings at issue yet judiciously avoided asking Mr. Roberts any questions regarding statements made or information provided at the meetings. This leaves one to question whether OPC is truly searching for the truth regarding what actually transpired at these meetings.

24. SSU has the constitutional right to communicate its views on substantive issues with its customers without interference from or granting an opportunity to respond to OPC. Pacific Gas and

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<sup>20</sup>March 12, 1996 Motion to Dismiss, at par. 17.

Electric Company v. Public Utilities Commission of California, 475 U.S. 1, 89 L.Ed. 2d 1, 106 S.Ct. 903 (1986); In the Matter of AN INVESTIGATION OF THE SOURCES OF SUPPLY AND FUTURE DEMAND OF KENTUCKY-AMERICAN WATER COMPANY, Case No. 93-434, Kentucky Public Service Commission, order issued March 3, 1995. See Exhibit G. Accordingly, the movants' allegations that SSU's customer meetings and so-called "one sided" discussion of uniform rates vs. stand-alone rates were improper and form the basis for dismissal are baseless.

25. SSU also feels compelled to request that the Commission review the transcripts of the many customer service hearings in this proceeding. A review of those transcripts will confirm that OPC did its best to create the confusion that it now wishes to hold SSU accountable for.

**Alleged Interference with the Citizens' Right to Counsel**

26. Again, there is no legal authority supporting dismissal of this rate case based on an alleged interference with the citizens' right to counsel, and no such authority is cited by the movants. In any event, based on the legal precedent cited in paragraph 23 above, SSU has not interfered with the citizens' right to counsel.

27. Again, SSU denies advising its customers "... that the amount of increased revenue the utility would receive from customers was a foregone conclusion."<sup>21</sup>

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<sup>21</sup>March 12, 1996 Motion to Dismiss, at par. 20.

28. OPC also complains that SSU advised customers that OPC had a conflict in representing customers on the rate structure issue. Of course, this is precisely what OPC has stated at customer service hearings and in their Motion to Appoint separate counsel for customers supporting different rate structures. When OPC makes these statements, they are couched in the context of an attorney who is faced with a legitimate (and historic) conflict of interest -- a notion with which SSU concurs. When SSU makes the same statements, they are characterized by OPC as "outrageous interference with the representation of customers by the Public Counsel" which "deprives parties of due process in this case and shatters the fairness of the process."<sup>22</sup> OPC's lack of credibility is transparent.

29. In sum, there is no factual or legal basis to dismiss SSU's Amended Application for Increased Water and Wastewater Rates based on an alleged "interference" with the supplemental notice to customers nor an alleged interference with the citizens' right to counsel.

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<sup>22</sup>Id., at par. 21.

WHEREFORE, for the foregoing reasons, SSU respectfully requests that the Commission deny the March 12, 1996 Motion to Dismiss and accompanying Request for an Evidentiary Hearing.

Respectfully submitted,

  
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KENNETH A. HOFFMAN, ESQ.  
WILLIAM B. WILLINGHAM, ESQ.  
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and

BRIAN P. ARMSTRONG, ESQ.  
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Southern States Utilities, Inc.  
1000 Color Place  
Apopka, Florida 32703  
(407) 880-0058

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of SSU's Response in Opposition to March 12th Motion to Dismiss and Request for Evidentiary Hearing was furnished by U. S. Mail to the following on this 19th day of March, 1996:

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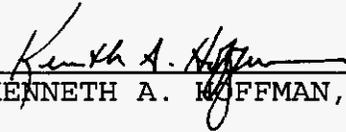
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Mr. Paul Mauer, President  
Harbour Woods Civic Association  
11364 Woodsong Loop N  
Jacksonville, FL 32225

  
\_\_\_\_\_  
KENNETH A. HOFFMAN, ESQ.

1995/mdismiss

State of Florida



## Public Service Commission

**-M-E-M-O-R-A-N-D-U-M-**

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**DATE:** December 28, 1995

**TO:** Blanca Bayó, Director of Records and Reporting

**FROM:** Susan F. Clark, Chairman *SFC*

**RE:** Communication from Lieutenant Governor Buddy MacKay regarding Docket Nos. 920199-WS, 930880-WS and 950495-WS

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Please find attached a copy of a letter of December 21, 1995, from Lieutenant Governor Buddy MacKay. Attached to the Lieutenant Governor's letter is a letter from Mr. Arend Sandbulte, Chairman and CEO of Minnesota Power. Because these letters address matters relevant to a pending proceeding, it is necessary to place this memorandum and attachment on the record of the above-referenced proceeding pursuant to section 350.042, Florida Statutes. Please give notice of this communication to all parties to the docket and inform them that they have 10 days from receipt of the notice to file a response.

Attachment

Exhibit A

7689



OFFICE OF THE LIEUTENANT GOVERNOR

December 21, 1995

Ms. Susan F. Clark, Chair  
Public Service Commission  
Gunther Building  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0855

Dear Commissioner Clark:

I have had several discussions recently on the direction of the state's water with the president of Southern State Utilities. They are very interested in being part of the dialogue we are having to protect and preserve one of our most valuable resources.

Although they are not a large player in the overall water management policy discussions presently underway through various legislative and executive office forums, as the state's largest private water utility they play a valuable role in preserving the quality of Florida's water by purchasing and upgrading small, often rural, failed water and wastewater systems.

In addition, I have received a copy of a letter sent to Governor Chiles by Mr. Arend Sandbulte, chairman and CEO of Minnesota Power, that details the current economic impact of recent Public Service Commission decisions on Southern States Utilities.

Mr. Sandbulte, who has joined the Florida Council of 100, because of his interest in supporting our efforts to generate a positive economic development and jobs climate in Florida for businesses and citizens, is very concerned about the regulatory environment at the PSC -- which over the last year have resulted in a year-to-date loss of \$453,749 and reduced the utilities rate of return on investment to -.43 percent.

I realize that your rate making decisions are very complicated and our office would not question those detailed, case specific decisions. However, I would be very concerned if we were to place in serious financial jeopardy a unique private water utility that is providing quality water and wastewater treatment facilities throughout the state.

I would appreciate any information you might be able to provide me on the overall economic and financial consequences facing SSU as outlined in the attached letter so I can respond to Mr. Sandbulte's concerns.

Sincerely,

A handwritten signature in cursive script that reads "Buddy MacKay".

Buddy MacKay

RECEIVED

DEC 26 1995

Florida Public Service Comm.  
Commissioner Clark

KHM/kcr

attachment

Lida Roberts



• **minnesota power** / 30 west superior street / duluth, minnesota 55802-2093 / telephone 218-722-2641

*Arend J. Sandbulte - chairman and chief executive officer*

November 21, 1995

The Honorable Lawton Chiles  
Governor, State of Florida  
The Capitol  
Tallahassee, Florida 32399-0001

Dear Governor Chiles:

I appreciated the chance to see and hear you and Lt. Gov. McKay at the recent Florida Council of 100 meeting at The Breakers. Jim Aphorhp originally sponsored my membership in this group so that my company could be represented and participate in activities to help Florida achieve its goals. As an out-of-state member of the Council, I appreciate your interest in public-private partnerships and creating win-win situations for the betterment of Florida and its stakeholders. The topic chosen for the Council of 100 meeting, water resources, was of particular interest to me.

Minnesota Power (MP) is a major stakeholder in Florida through ownership since 1984 of Southern States Utilities (SSU) of Apopka which, with about 150 plants stretching from The Panhandle to Collier County, is the largest investor-owned water and wastewater utility in Florida and follows only the municipal systems of Miami and Jacksonville in overall size. We also own 80 percent of Lehigh Acquisition Corporation, which is in the real estate sales business at Lehigh Acres (near Fort Myers) and Sugar Mill Woods, located north of Tampa. Our Florida utility and real estate assets total some \$408 million, not the largest corporate investor in the state, but by no means the smallest. About 21 percent of Minnesota Power's corporate assets are located in Florida, and we'd like to grow that percentage. Our investment strategy -- earning fair and reasonable profits in Florida -- is based on a vibrant marketplace, with respect to real estate, and based on fair regulatory treatment from the Florida Public Service Commission (FPSC). With respect to the latter, we have a serious problem. Please allow me to explain.

SSU is a vital partner with the State of Florida, the Department of Environmental Protection (DEP) in particular, in not only providing safe drinking water to the company's water customers, but in protecting the state's precious water resources and aquifer through proper wastewater treatment and re-use of reclaimed water. The latter has been and is being accomplished through special reclaimed water projects, aquifer storage and recovery wells, and award-winning conservation programs and, in some instances, by taking over failing systems at the request of Florida regulators and bringing them into compliance because there was no adjacent or willing municipality ready to perform that state purpose.

ALWAYS AT YOUR SERVICE

*minnesota power*

Governor Chiles  
November 21, 1995  
Page 2

Recently the Florida Public Service Commission reversed a 1993 decision in which they had approved additional revenues for SSU of \$6.7 million to be collected under uniform water and wastewater rates for SSU's customers, a practice used by the majority of states which have considered the issue and by many Florida counties, and one which the Commission long has followed for electric and telephone company customers. The 1993 uniform rate decision was reaffirmed after a year's worth of statewide hearings considering conservation, aquifer protection, centralized SSU services and the affordability issues of "rate shock," which occurs when large capital expenditures are required for environmental reasons on plants with a small number of customers. That is why the Commission's recent order which would require Southern States to revert to so-called "stand-alone" rates is so disconcerting.

One group of customers (whose water usage, by the way, is significantly higher than the state's average usage and whose rates were higher on a uniform versus stand-alone basis) appealed the 1993 decision. The recent FPSC reversal was in response to an order issued by the First District Court of Appeals on that appeal. The appellate court said that the FPSC needed to make a specific legal finding that SSU's operations were "functionally-related" before ordering a uniform rate structure. That finding was made by the FPSC in June 1995 following another year-long proceeding.

However, when the mandate came down from the courts, the FPSC decided not to reopen the original case and incorporate the "functionally-related" finding, stating they were declining to do so "as a matter of policy," without any further explanation. They then proceeded to order retroactive "stand-alone rates" (which could raise water and wastewater bills for many retirees to over \$100 a month), ordered SSU to make refunds of \$8 million to customers of a small number of plants, and said we could not collect any underpaid amounts from other customers resulting from a rate structure the Commission ordered us to institute in 1993.

The impact of this decision on SSU is staggering. If it stands, the financial result will be devastating on SSU's ability to attract financing and continue to make investments in Florida's future. The Commission awarded SSU \$6.7 million in additional revenue in 1993, and now they are asking that \$8 million be refunded. This will create mass confusion and severe financial ramifications with our customers. Monthly bills for homeowners in nearly 100 communities throughout the state will increase, some by as much as 300 percent. And the rates of the high-use water customers who appealed will drop even further, encouraging less conservation concern than ever among these high-use customers.

*minnesota power*

Governor Chiles  
November 21, 1995  
Page 3

Governor, I don't believe we are whiners. If you believe we're at fault somehow, I hope you'll tell us what we've done wrong so that we have a chance to consider doing things differently. We want to do the right things and do those things right. If you have any questions about our corporate citizenship record, I invite you to talk to Arne Carlson, Governor of Minnesota. I'm sure he'll tell you Minnesota Power is one of the top corporate citizens in the State of Minnesota, from the multi-faceted standard of dedication to economic development, to outstanding service to utility customers and honesty and integrity in all our business activities.

The FPSC actions of late require us to pursue fair treatment through asking the Commission to reconsider its decisions which affect us so negatively or, if necessary, through the courts. Court action may engender negative publicity for MP; however, we have no choice but to seek fair treatment. We'll not be driven from Florida without a fight, a fight thrust on us by an inconsistent and problematical FPSC decision-making process and record.

We want to help solve Florida's water-related issues, but we can't do so when FPSC decisions create for us violations of loan covenants with our lenders. With the loss of income this FPSC order would produce, our coverage ratio would be well below the minimum required by the loan documents. We simply cannot continue putting \$20 million or more annually into water utility investments, most of it to meet environmental and customer-needs demands, unless we can make a reasonable profit. We certainly can't do so if we are in default with our lenders! This is not a rocket-science issue, but rather one of simple equity and fairness. The public-private partnership is just not working, and it needs to be fixed!

We will continue our efforts to get fair treatment from the FPSC directly or, if it's not forthcoming from them, through the courts. Any advice, guidance, counsel or constructive criticism you can offer to normalize the current unfortunate situation will be appreciated and seriously considered. We are willing to meet anytime, anyplace, with anyone for that purpose.

I hope to hear from you soon.

Sincerely,

  
Arend Sandbulte

mjk

copy: Lt. Gov. Buddy McKay

cc: Ed Russell; Jim Roberts; John Cirello; Brian Armstrong; Ida Roberts

State of Florida



## Public Service Commission

-M-E-M-O-R-A-N-D-U-M-

---

DATE: January 3, 1996

TO: Blanca Bayó, Director of Records and Reporting

FROM: Susan F. Clark, Chairman *WJS for SFC*

RE: Communication from Secretary of Commerce Charles Dusseau regarding Docket Nos. 920199-WS, 930880-WS and 950495-WS

---

Please find attached a copy of a letter of January 2, 1996, from Secretary of Commerce Charles Dusseau. Because this letter addresses matters relevant to pending proceedings, it is necessary to place this memorandum and attachment on the records of the above-referenced proceedings pursuant to section 350.042, Florida Statutes. Please give notice of this communication to all parties to the dockets and inform them that they have 10 days from receipt of the notice to file a response.

Attachment

Exhibit B

7694



FLORIDA DEPARTMENT OF COMMERCE  
Secretary Charles Dusseau

GOVERNOR  
Lawton Chiles

Office of the  
Secretary  
(904) 488-3104  
Fax: (904) 922-9150

Economic  
Development  
(904) 488-6300  
Fax: (904) 922-9595

International Trade  
and Development  
(904) 488-6124  
Fax: (904) 487-1407

Tourism  
(904) 922-8887  
Fax: (904) 922-9329

Administrative  
Services  
(904) 488-9377  
Fax: (904) 922-2174

January 2, 1996

Susan F. Clark, Chairperson  
Florida Public Service Commission  
Gunther Building  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0855

Dear Commissioner Clark:

I recently received a copy of a letter sent to Governor Chiles by Mr. Arend Sandbulte, Chairman and CEO of Minnesota Power in Duluth, Minnesota. As you are aware, Minnesota Power owns Southern States Utilities, a water and wastewater utility company based in Apopka. This letter outlined his corporation's concerns regarding the PSC's recent uniform rate ruling pertaining to Southern States Utilities (PSC-95-1292-FOF-WS).

Businesses frequently contact this Department with concerns about regulatory decisions, and the PSC under your leadership has been very supportive of our efforts to ensure a fair and favorable setting for economic development in Florida. Your recent cooperation on the economic development expenditures issue and the telephone area code issue are good examples. However, as you can imagine, one of the basic elements for business survival in any marketplace is a predictable and stable business climate. Without it, business managers are unable to make informed decisions which can often make the difference between business survival and failure. An unpredictable environment, even in a regulated setting, can put tremendous financial pressure on firms such as SSU, which may lead them to rethink their investment in Florida and could cause businesses considering Florida as a site for expansion to go elsewhere.

In this case, I have asked a member of our staff, Nick Leslie, to consult with your staff and with the Water Policy Office in the Department of Environmental Protections. Nick will advise me on the reasoning behind the Commission's order and on what, if any, recourse might be available to Southern States Utilities. Nick can be reached at 487-2568.

FLORIDA

Collins Building  
107 West Gaines Street  
Tallahassee, Florida 32399-2000

7695

Susan F. Clark, Chairperson  
January 2, 1996  
Page Two

As always, I appreciate the cooperation of the Commission and thank you for your attention to this issue.

Sincerely,

A handwritten signature in cursive script that reads "Charles Dusseau".

Charles Dusseau  
Secretary of Commerce

CD:ss

cc: Governor Lawton Chiles  
Jeff Sharkey

Commissioners:  
SUSAN F. CLARK, CHAIRMAN  
J. TERRY DEASON  
JULIA L. JOHNSON  
DIANE K. KIESLING  
JOE GARCIA

State of Florida



Blanca S. Bayó, Director  
Division of Records and Reporting  
(904) 413-6770

## Public Service Commission

DATE: January 4, 1996

TO: Parties of Record

FROM: Blanca S. Bayó, Director, Division of Records and Reporting *BSB/kj*

RE: DOCKET NO. 920199-WS - Application for rate increase in Brevard, Charlotte/Lee, Citrus, Clay, Duval, Highlands, Lake, Marion, Martin, Nassau, Orange, Osceola, Pasco, Putnam, Seminole, Volusia, and Washington Counties by Southern States Utilities, Inc., Collier County by Marco Shores Utilities; Hernando County by Spring Hill Utilities; and Volusia County by Deltona Lakes Utilities.  
DOCKET NO. 930880-WS - Investigation into appropriate rate structure for Southern States for all regulated systems in Bradford, Brevard, Citrus, Clay, Collier, Duval, Hernando, Highlands, Lake, Lee/Charlotte, Marion, Martin, Nassau, Orange, Osceola, Pasco, Putnam, Seminole, St. Johns, St. Lucie, Volusia, and Washington Counties.  
DOCKET NO. 950495-WS - Application for rate increase and increase in service availability charges by Southern States 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.

This is to inform you that Chairman Clark has reported the following communications in the above referenced dockets.

- Letter from Lieutenant Governor Buddy MacKay dated December 21, 1995. Attached is a letter from Mr. Arend Sandbult, Chairman and CEO of Minnesota Power.
- Letter from Secretary of Commerce Charles Dusseau dated January 2, 1996.

These letters, copies of which are attached, are being made a part of the record in these proceedings. Pursuant to Section 350.042, F.S., any party who desires to respond to an ex parte communication may do so. The response must be received by the Commission within 10 days after receiving notice that the ex parte communication has been placed on the record.

BSB/cp  
Attachments  
cc: Rob Vandiver/w/letter

Exhibit C



OFFICE OF THE LIEUTENANT GOVERNOR

December 21, 1995

Ms. Susan F. Clark, Chair  
Public Service Commission  
Gunther Building  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0855

Dear Commissioner Clark:

I have had several discussions recently on the direction of the state's water with the president of Southern State Utilities. They are very interested in being part of the dialogue we are having to protect and preserve one of our most valuable resources.

Although they are not a large player in the overall water management policy discussions presently underway through various legislative and executive office forums, as the state's largest private water utility they play a valuable role in preserving the quality of Florida's water by purchasing and upgrading small, often rural, failed water and wastewater systems.

In addition, I have received a copy of a letter sent to Governor Chiles by Mr. Arend Sandbulte, chairman and CEO of Minnesota Power, that details the current economic impact of recent Public Service Commission decisions on Southern States Utilities.

Mr. Sandbulte, who has joined the Florida Council of 100, because of his interest in supporting our efforts to generate a positive economic development and jobs climate in Florida for businesses and citizens, is very concerned about the regulatory environment at the PSC -- which over the last year have resulted in a year-to-date loss of \$453,749 and reduced the utilities rate of return on investment to -43 percent.

I realize that your rate making decisions are very complicated and our office would not question those detailed, case specific decisions. However, I would be very concerned if we were to place in serious financial jeopardy a unique private water utility that is providing quality water and wastewater treatment facilities throughout the state.

I would appreciate any information you might be able to provide me on the overall economic and financial consequences facing SSU as outlined in the attached letter so I can respond to Mr. Sandbulte's concerns.

Sincerely,

Buddy MacKay

RECEIVED

DEC 21 1995

Florida Public Service Comm.  
Commissioner Clark

KHM/kcr

attachment

THE CAPITOL  
TALLAHASSEE, FLORIDA 32399-0001

A RECYCLED PAPER PRODUCT PRINTED WITH SOY INK

7698

Lida Roberts



**minnesota power** / 30 west superior street / duluth, minnesota 55802-2093 / telephone 218-722-2641

*Arund J. Sandbulte - chairman and chief executive officer*

November 21, 1995

The Honorable Lawton Chiles  
Governor, State of Florida  
The Capitol  
Tallahassee, Florida 32399-0001

Dear Governor Chiles:

I appreciated the chance to see and hear you and Lt. Gov. McKay at the recent Florida Council of 100 meeting at The Breakers. Jim Apthorp originally sponsored my membership in this group so that my company could be represented and participate in activities to help Florida achieve its goals. As an out-of-state member of the Council, I appreciate your interest in public-private partnerships and creating win-win situations for the betterment of Florida and its stakeholders. The topic chosen for the Council of 100 meeting, water resources, was of particular interest to me.

Minnesota Power (MP) is a major stakeholder in Florida through ownership since 1984 of Southern States Utilities (SSU) of Apopka which, with about 150 plants stretching from The Panhandle to Collier County, is the largest investor-owned water and wastewater utility in Florida and follows only the municipal systems of Miami and Jacksonville in overall size. We also own 80 percent of Lehigh Acquisition Corporation, which is in the real estate sales business at Lehigh Acres (near Fort Myers) and Sugar Mill Woods, located north of Tampa. Our Florida utility and real estate assets total some \$408 million, not the largest corporate investor in the state, but by no means the smallest. About 21 percent of Minnesota Power's corporate assets are located in Florida, and we'd like to grow that percentage. Our investment strategy -- earning fair and reasonable profits in Florida -- is based on a vibrant marketplace, with respect to real estate, and based on fair regulatory treatment from the Florida Public Service Commission (FPSC). With respect to the latter, we have a serious problem. Please allow me to explain.

SSU is a vital partner with the State of Florida, the Department of Environmental Protection (DEP) in particular, in not only providing safe drinking water to the company's water customers, but in protecting the state's precious water resources and aquifer through proper wastewater treatment and re-use of reclaimed water. The latter has been and is being accomplished through special reclaimed water projects, aquifer storage and recovery wells, and award-winning conservation programs and, in some instances, by taking over failing systems at the request of Florida regulators and bringing them into compliance because there was no adjacent or willing municipality ready to perform that state purpose.

ALWAYS AT YOUR SERVICE

7699

*minnesota power*

Governor Chiles  
November 21, 1995  
Page 2

Recently the Florida Public Service Commission reversed a 1993 decision in which they had approved additional revenues for SSU of \$6.7 million to be collected under uniform water and wastewater rates for SSU's customers, a practice used by the majority of states which have considered the issue and by many Florida counties, and one which the Commission long has followed for electric and telephone company customers. The 1993 uniform rate decision was reaffirmed after a year's worth of statewide hearings considering conservation, aquifer protection, centralized SSU services and the affordability issues of "rate shock," which occurs when large capital expenditures are required for environmental reasons on plants with a small number of customers. That is why the Commission's recent order which would require Southern States to revert to so-called "stand-alone" rates is so disconcerting.

One group of customers (whose water usage, by the way, is significantly higher than the state's average usage and whose rates were higher on a uniform versus stand-alone basis) appealed the 1993 decision. The recent FPSC reversal was in response to an order issued by the First District Court of Appeals on that appeal. The appellate court said that the FPSC needed to make a specific legal finding that SSU's operations were "functionally-related" before ordering a uniform rate structure. That finding was made by the FPSC in June 1995 following another year-long proceeding.

However, when the mandate came down from the courts, the FPSC decided not to reopen the original case and incorporate the "functionally-related" finding, stating they were declining to do so "as a matter of policy," without any further explanation. They then proceeded to order retroactive "stand-alone rates" (which could raise water and wastewater bills for many retirees to over \$100 a month), ordered SSU to make refunds of \$8 million to customers of a small number of plants, and said we could not collect any underpaid amounts from other customers resulting from a rate structure the Commission ordered us to institute in 1993.

The impact of this decision on SSU is staggering. If it stands, the financial result will be devastating on SSU's ability to attract financing and continue to make investments in Florida's future. The Commission awarded SSU \$6.7 million in additional revenue in 1993, and now they are asking that \$8 million be refunded. This will create mass confusion and severe financial ramifications with our customers. Monthly bills for homeowners in nearly 100 communities throughout the state will increase, some by as much as 300 percent. And the rates of the high-use water customers who appealed will drop even further, encouraging less conservation concern than ever among these high-use customers.

minnesota power

Governor Chiles  
November 21, 1995  
Page 3

Governor, I don't believe we are whiners. If you believe we're at fault somehow, I hope you'll tell us what we've done wrong so that we have a chance to consider doing things differently. We want to do the right things and do those things right. If you have any questions about our corporate citizenship record, I invite you to talk to Arne Carlson, Governor of Minnesota. I'm sure he'll tell you Minnesota Power is one of the top corporate citizens in the State of Minnesota, from the multi-faceted standard of dedication to economic development, to outstanding service to utility customers and honesty and integrity in all our business activities.

The FPSC actions of late require us to pursue fair treatment through asking the Commission to reconsider its decisions which affect us so negatively or, if necessary, through the courts. Court action may engender negative publicity for MP; however, we have no choice but to seek fair treatment. We'll not be driven from Florida without a fight, a fight thrust on us by an inconsistent and problematical FPSC decision-making process and record.

We want to help solve Florida's water-related issues, but we can't do so when FPSC decisions create for us violations of loan covenants with our lenders. With the loss of income this FPSC order would produce, our coverage ratio would be well below the minimum required by the loan documents. We simply cannot continue putting \$20 million or more annually into water utility investments, most of it to meet environmental and customer-needs demands, unless we can make a reasonable profit. We certainly can't do so if we are in default with our lenders! This is not a rocket-science issue, but rather one of simple equity and fairness. The public-private partnership is just not working, and it needs to be fixed!

We will continue our efforts to get fair treatment from the FPSC directly or, if it's not forthcoming from them, through the courts. Any advice, guidance, counsel or constructive criticism you can offer to normalize the current unfortunate situation will be appreciated and seriously considered. We are willing to meet anytime, anyplace, with anyone for that purpose.

I hope to hear from you soon.

Sincerely,

  
Arend Sandbulte

mjk

copy: Lt. Gov. Buddy McKay

cc: Ed Russell; Jim Roberts; John Cirello; Brian Armstrong; Ida Roberts

7701



FLORIDA DEPARTMENT OF COMMERCE  
Secretary Chris Dusseau

GOVERNOR  
Lawton Chiles

Office of the  
Secretary  
(904) 488-3104  
Fax (904) 922-9150

Economic  
Development  
(904) 488-6300  
Fax (904) 922-9596

International Trade  
and Development  
(904) 488-6124  
Fax (904) 487-1407

Tourism  
(904) 922-8887  
Fax (904) 922-9329

Administrative  
Services  
(904) 488-9377  
Fax (904) 922-2174

January 2, 1996

Susan F. Clark, Chairperson  
Florida Public Service Commission  
Gunther Building  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0855

Dear Commissioner Clark:

I recently received a copy of a letter sent to Governor Chiles by Mr. Arend Sandbulte, Chairman and CEO of Minnesota Power in Duluth, Minnesota. As you are aware, Minnesota Power owns Southern States Utilities, a water and wastewater utility company based in Apopka. This letter outlined his corporation's concerns regarding the PSC's recent uniform rate ruling pertaining to Southern States Utilities (PSC-95-1292-FOF-WS).

Businesses frequently contact this Department with concerns about regulatory decisions, and the PSC under your leadership has been very supportive of our efforts to ensure a fair and favorable setting for economic development in Florida. Your recent cooperation on the economic development expenditures issue and the telephone area code issue are good examples. However, as you can imagine, one of the basic elements for business survival in any marketplace is a predictable and stable business climate. Without it, business managers are unable to make informed decisions which can often make the difference between business survival and failure. An unpredictable environment, even in a regulated setting, can put tremendous financial pressure on firms such as SSU, which may lead them to rethink their investment in Florida and could cause businesses considering Florida as a site for expansion to go elsewhere.

In this case, I have asked a member of our staff, Nick Leslie, to consult with your staff and with the Water Policy Office in the Department of Environmental Protections. Nick will advise me on the reasoning behind the Commission's order and on what, if any, recourse might be available to Southern States Utilities. Nick can be reached at 487-2568.

Collins Building  
107 West Gaines Street  
Tallahassee, Florida 32399-2000

FLORIDA

Susan F. Clark, Chairperson  
January 2, 1996  
Page Two

As always, I appreciate the cooperation of the Commission and thank you for your attention to this issue.

Sincerely,

A handwritten signature in cursive script that reads "Charles Dusseau".

Charles Dusseau  
Secretary of Commerce

CD:ss

cc: Governor Lawton Chiies  
Jeff Sharkey

State of Florida



Public Service Commission

-M-E-M-O-R-A-N-D-U-M-

DATE: January 5, 1996

TO: Blanca Bayó, Director of Records and Reporting

FROM: Susan F. Clark, Chairman *SFC*

RE: Letter in Response to Communication from Lieutenant Governor Buddy MacKay regarding Docket Nos. 920199-WS, 930880-WS and 950495-WS

Please find attached a copy of my letter in response to a letter of December 21, 1995, from Lieutenant Governor Buddy MacKay. Because this letter responds to a communication from the Lieutenant Governor which addressed matters relevant to a pending proceeding, it is necessary to place this memorandum and attachment on the record of the above-referenced proceeding pursuant to section 350.042, Florida Statutes. Please give notice of this communication to all parties to the docket and inform them that they have 10 days from receipt of the notice to file a response.

Attachment

Exhibit D

State of Florida

Susan F. Clark  
Chairman



Gerald L. Gunter Building  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850  
(904) 413-6040  
FAX (904) 487-1716

Public Service Commission

January 5, 1996

The Honorable Buddy MacKay  
Lieutenant Governor  
State of Florida  
The Capitol  
Tallahassee, Florida 32399-0001

Dear Governor MacKay:

Thank you for your letter of December 21, 1995, regarding Southern States Utilities, Inc. (SSU).

As you pointed out in your letter, the Commission's ratemaking decisions are complicated and case-specific determinations. The Commission's decisions regarding SSU's rates have been arrived at after careful consideration of testimony and evidence presented in public hearings. At the present time, SSU has an application for rate increase pending before the Commission. Also, the Commission's decisions in three other pivotal cases involving SSU are either pending reconsideration by the Commission or are on appeal in the First District Court of Appeal.

Due to the fact that many cases involving SSU are pending before the Commission, I am unable to make any statements about the matters raised in Mr. Arend Sandbulte's letter to the Governor. However, I have instructed Mr. Rob Vandiver, the Commission's General Counsel, to work with your office to the extent necessary for you to understand this Agency's proceedings and its decisions affecting SSU. In fact, Mr. Vandiver met yesterday with Mr. Nels Roseland of your office and Mr. Nick Leslie of the Department of Commerce. Our staff will continue to be available to your office in this capacity.

Sincerely,

A handwritten signature in cursive script that reads "Susan F. Clark".

Susan F. Clark  
Chairman

c: Rob Vandiver

State of Florida



## Public Service Commission

**-M-E-M-O-R-A-N-D-U-M-**

---

**DATE:** January 11, 1996

**TO:** Blanca Bayó, Director of Records and Reporting

**FROM:** Susan F. Clark, Chairman *SFC*

**RE:** Letter in Response to letter from Secretary of Commerce Charles Dusseau regarding Docket Nos. 920199-WS, 930880-WS and 950495-WS

---

Please find attached a copy of my letter in response to a letter of January 2, 1996, from Secretary of Commerce Charles Dusseau. Because this letter is a response to a letter which addresses matters relevant to pending proceedings, it is necessary to place this memorandum and attachment on the records of the above-referenced proceedings pursuant to section 350.042, Florida Statutes. Please give notice of this communication to all parties to the dockets and inform them that they have 10 days from receipt of the notice to file a response.

Attachment

Exhibit E

7706

State of Florida

Susan F. Clark  
Chairman



Gerald L. Gunter Building  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850  
(904) 413-6040  
FAX (904) 487-1716

## Public Service Commission

January 11, 1996

The Honorable Charles Dusseau  
Secretary  
Florida Department of Commerce  
Collins Building  
107 West Gaines Street  
Tallahassee, Florida 32399-0001

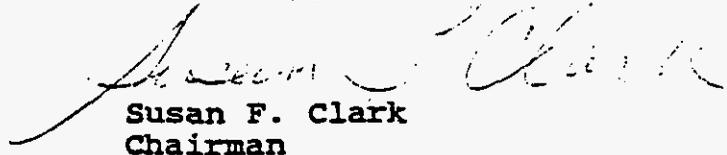
Dear Secretary Dusseau:

Thank you for your letter of January 2, 1996, regarding Southern States Utilities, Inc. (SSU).

The Commission's decisions regarding SSU's rates have been arrived at after careful consideration of testimony and evidence presented in public hearings. At the present time, SSU has an application for rate increase pending before the Commission. Also, the Commission's decisions in three other pivotal cases involving SSU are either pending reconsideration by the Commission or are on appeal in the First District Court of Appeal.

Due to the fact that many cases involving SSU are pending before the Commission, I am unable to make any statements about the matters raised in your letter. However, I have instructed Mr. Rob Vandiver, the Commission's General Counsel, to work with your office to the extent necessary for you to understand this Agency's proceedings and its decisions affecting SSU. In fact, Mr. Vandiver met on January 4th with Mr. Nels Roseland of the Governor's Office and Mr. Nick Leslie of your office. Our staff will continue to be available to your office in this capacity.

Sincerely,

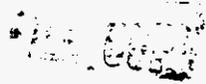
  
Susan F. Clark  
Chairman

c: Rob Vandiver

10 24  
1

MICHAEL B. TWOMEY  
Attorney At Law  
P.O. Box 5256  
Tallahassee, Florida 32314-5256  
Tel. (904) 421-9530 • Fax (904) 421-8543

January 16, 1996



Blanca S. Bayo  
Director  
Division of Records & Reporting  
Florida Public Service Commission  
2540 Shumard Oak Blvd.  
Tallahassee, Florida 32399-1400

Re: Docket Nos. 920199-WS, 930880-WS and 950495-WS and Ex Parte  
Communication from Lt. Gov. Buddy MacKay

Dear Ms. Bayo:

The attached letter to the Lt. Gov. is my response to his ex parte communication to the Commissioners "inquiring" about Southern States Utilities, Inc. Please place it in the files of these dockets.

I am not immediately going to serve the other parties of these dockets with this response. Should I? What is the Commission's practice with respect to serving parties and other interested persons on a docket's mailing list with these type communications? I will give you a call later to ask.

Thank you for your assistance.

Sincerely,

  
Michael B. Twomey

Exhibit F

MAIL ROOM  
1986 JAN 22 AM 10:13  
7708  
RECEIVED 00766 JAN 22 86  
FLORIDA PUBLIC SERVICE COMMISSION  
DOCUMENT NUMBER-DATE  
FPSC-RECORDS/REPORTING

**MICHAEL B. TWOMEY**

Attorney At Law  
P.O. Box 5256  
Tallahassee, Florida 32314-5256  
Tel. (904) 421-9530 • Fax (904) 421-8543

January 3, 1996

The Honorable Buddy MacKay  
Lieutenant Governor, State of Florida  
The Capitol  
Tallahassee, Florida 32399-0001

Dear Lieutenant Governor MacKay:

I am an attorney representing five civic associations and over 45,000 households in four active dockets involving Southern States Utilities, Inc. ("SSU") at the Florida Public Service Commission ("PSC"). Yesterday I received a copy of your December 21, 1995 letter to Susan Clark, Chairman of the PSC, stating that you had recent discussions with SSU's President, and that you had received a copy of a letter to Governor Chiles from the CEO of SSU's parent corporation, Minnesota-based Minnesota Power, now a member of the Florida Council of 100, complaining about the economic impact of PSC decisions on SSU. You stated to Clark that you "would be very concerned if we were to place in serious financial jeopardy a unique private water utility" that you believe plays a valuable role "by purchasing and upgrading small, often rural, failed water and wastewater systems" and requested information from the PSC addressing the concerns outlined by Minnesota Power CEO Sandbulte in his sniveling and grossly misleading four-page letter, which you forwarded to Clark.

Although the PSC is a subordinate agency of the legislature, Governor Chiles has appointed or reappointed all five commissioners. If you should succeed the Governor, you will be in the position of reappointing these individuals or axing them if you find them wanting for any reason. I am convinced that you are well-intended in your purpose, but that you have been misled by Minnesota Power, SSU and their lobbyists with close ties to the Executive Office. Irrespective of your motive, I find your communication to Commissioner Clark to be an unprecedented, unwarranted and outrageous intrusion in the administrative hearing process of this state. That it has been timed to improperly pressure the PSC at a critical juncture in several cases before them makes your communication even more objectionable. That Secretary Dusseau of the Florida Department of Commerce has also weighed in lobbying for SSU with impermissible ex parte communications to the PSC makes this entire matter even more questionable. I intend to counter every Arend Sandbulte misstatement to the Governor within the next several days and will copy you. However, let me briefly tell you why I find your actions so objectionable.

That Florida has "failed water systems" at all is largely due to incompetent developers aided by the complicity of government in luring homeowners to Florida. The PSC has for decades allowed

The Honorable Buddy MacKay

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January 3, 1996

developers to deceive home purchasers by luring them with exceedingly low, non-compensatory water and sewer rates. The low rates last only until the last lot is sold and then rates are allowed to go through the roof. Additionally, the PSC has historically been negligent in fulfilling its statutory responsibility for setting "fair and reasonable" service availability or CIAC charges. As a consequence, Florida's privately owned water and sewer systems run the gamut from being horribly over-capitalized to having no owner investment, neither of which is acceptable from a regulatory perspective. Regulators, either at the PSC or county level, have also consistently failed to ensure that systems were adequately maintained. The result, admittedly, has been the abandonment of some "trashy" systems. Unfortunately, to date, the PSC and SSU have considered that virtually anyone with a water faucet or central sewer service was fair game for financing the clean-up of these systems. With no perceptible awareness of the constitutional or statutory underpinnings of utility regulation in this country, they have willy-nilly assumed they could dip into the wallets of my clients to correct their own failings and those of vanishing developers. They are wrong. You are wrong, too, if you believe the contents of your letter and the Sandbulte letter. Worse still, you have compounded your error by interfering in pending administrative cases that are supposed to be free of such interference. You have sided with a "carpetbag" Minnesota power company by clearly suggesting that the PSC has harmed SSU by not raising my clients' rates even more than the unconscionable levels already experienced. Lastly, you have interfered on the eve of two critical decisions facing the PSC. Let me give you a few more specifics.

Utility rates are supposed to be based on the "cost of service" to the customers being charged the rates. SSU is a conglomeration of over 150 water and sewer systems spread over the state. The vast majority are not physically interconnected by pipe and, therefore, cannot provide utility service to one another. Most systems were previously owned by others and were only recently acquired by SSU. Some systems were well-maintained and reasonably capitalized, while others were not. My clients in Sugarmill Woods, for example, paid in about \$2,300 per customer in service availability charges or CIAC, which amount is deducted from the utility rate base and, therefore, legally entitles them to lower rates. The PSC did many objectionable things when it imposed the so-called "uniform rates" for SSU in 1993, including failing to properly notice the customers, failing to have competent evidence to support its findings of fact, and failing to follow the law. By ordering uniform or identical rates without any regard for cost of service or CIAC levels, the PSC essentially "stole" the CIAC of my clients and transferred it to others. Widows and other of my retired clients living on fixed incomes in Sugarmill Woods were forced to pay subsidies of \$300 a year to support the \$4,000 a year rate subsidies received by industrial and commercial customers at SSU's South Forty system. Likewise, clients of mine living in \$45,000 homes were forced to subsidize the utility rates of people living in \$250,000 homes served by other SSU systems. In all, forced subsidies exceeded \$4 million annually as a result of the 1993 case.

The uniform rates charged by SSU were a straight mathematical average that didn't consider either the "ability to pay" when compelling the payment of subsidies or the "need" for subsidies

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when dispensing them. Importantly, to anyone that understands regulatory law and the constitutions, "ability to pay" and "need" are not factors that can constitutionally be considered. Likewise, while you may think SSU buying trashy systems has value to the state, neither you, the PSC, nor the legislature can do it with my clients' utility rates. Do it with General Revenue if you think it is so important and if you can justify bailing out incompetent developers and regulators to the electorate. Doing it through uniform rates is not a constitutional option. Uniform rates are "regulatory socialism" pure and simple and I don't think you want to tie your political star to them.

After a two-year David and Goliath fight against both the PSC and SSU, my clients and I, at great expense to them, succeeded in having the uniform rate decision reversed at the First District Court of Appeal and then pushed a foot-dragging PSC into ordering stand-alone rates and almost \$9 million in refunds to the overcharged customers. Sandbulte and his crew could have chosen to recover almost exactly the same revenues without any risk of refund liability to his shareholders in 1993, but arrogantly choose to gamble by abusing my clients. During the pendency of our appeal, Sandbulte failed to make his shareholders aware of the refund contingent liability and is now faced with making refunds at a time when he desperately needs cash to pay dividends. He has come to you and the Governor for help. You should ignore him and concentrate on the needs of your constituents. In any event, you should stay out of the administrative law process unless you clearly and publicly officially intervene on SSU's side in these matters.

Despite Sandbulte's assertions to the contrary, the PSC had no choice but to order the rate changes and refunds in the face of our victory in the courts. The subsequent PSC decision Sandbulte places so much faith in is also on appeal. It is every bit as shoddy as the PSC's first order and I am confident it, too, will be reversed. Sandbulte's statements to the Governor about the widespread acceptance of uniform rates elsewhere are grossly misleading, if not intentionally dishonest. I don't have time to debunk every misleading statement at the moment, but Sandbulte's statements are materially false. The PSC did what was required of it by the First District and, in the process, potentially saved Sandbulte from squandering more of his shareholders' dividends. He should be grateful.

Uniform rates, as now charged by SSU are illegal. Furthermore, they are unconstitutional and cannot be revived by revising the statutes. Ask a competent constitutional attorney and try to avoid a second out-of-state automobile registration type fiasco. I doubt that Sandbulte or Jeff Sharkey informed you of this, but they have talked you into taking the side of this utility in opposition to the overwhelming majority of SSU's customers, who are already outraged at the non-stop rate increases they have experienced at the hands of the PSC and SSU. Your inappropriate intervention here is an ill-conceived tactic for starting a state-wide campaign.

Most importantly, neither you, nor Commerce Secretary Charles Dusseau have any business interceding in these administrative hearing matters, especially at a time when the order requiring rate reductions and refunds is under reconsideration by the PSC and when that agency will vote

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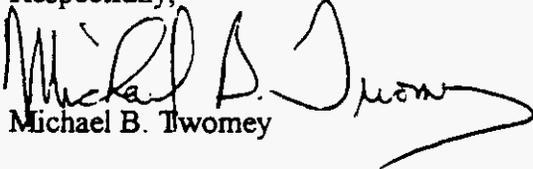
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tomorrow on what level, if any, interim rate increase to grant SSU in its most recent pending rate case. Your communications are inappropriate ex parte communications and have no place in any Section 120.57(1), F.S. proceeding. That you represent the "appointing authority" for PSC commissioners and are, therefore, in a position of bullying their result in these cases makes your interference all the more objectionable.

I plan to subpoena SSU lobbyist Jeff Sharkey to find what role, if any, he played in orchestrating this concerted attack on the PSC at this hour. In the interim, I would respectfully request that you immediately write Susan Clark and retract your letter. I would also ask that you direct Dusseau to withdraw his condescending and presumptuous communication of January 2, 1996, and advise him that he, too, has no legitimate business shilling for SSU against the interest of my clients.

Respectfully,

  
Michael B. Twomey

Attorney for the Sugarmill Woods Civic Association, Inc.,  
Marco Island Civic Association, Inc., the Spring Hill  
Civic Association, Inc., the Concerned Citizens of Lehigh Acres, and  
the Harbour Woods Civic Association

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

AN INVESTIGATION OF THE SOURCES OF SUPPLY )  
AND FUTURE DEMAND OF KENTUCKY-AMERICAN ) CASE NO. 93-434  
WATER COMPANY )

O R D E R

On January 10, 1995, the Attorney General's office, by and through his Public Service Litigation Branch, ("AG") filed a motion requesting the Commission to compel Kentucky-American Water Company ("Kentucky-American") to include in future billings the AG's response to a Kentucky-American bill insert discussing the need for a pipeline to the Louisville Water Company. The AG claims that Kentucky-American's use of a bill insert was an attempt to influence public opinion on an issue on which the AG has taken a contrary position and since ratepayers have paid for the cost of Kentucky-American's bill inserts, fairness requires the AG be provided an equal opportunity to respond.

Chetan Talwalkar filed a complaint against Kentucky-American alleging that the bill insert discussing the pipeline constitutes political advertising, the cost of which is not recoverable in rates pursuant to 807 KAR 5:016, Section 4. Talwalkar requests the Commission to investigate the propriety of Kentucky-American's pipeline advertising, prohibit any further expenditures for such advertising or require that the expenditures be recorded in a

Exhibit G

separate account pending investigation, and impose punitive measures to discourage similar violations in the future.

The Commission, having considered the motion to compel and the complaint, the responses thereto, and being sufficiently advised, hereby finds that Kentucky-American has an absolute right under the first amendment to the United States Constitution to express its opinions on the pipeline issue to its ratepayers and the public. Further, courts have held that it is a violation of a utility's right to free speech to be compelled to distribute a bill insert expressing views and opinions of others. See Pacific Gas and Electric Company v. Public Utilities Commission of California, 475 U.S. 1, 89 L.Ed.2d 1 (1986).

The Commission agrees that expenditures for advertising to promote the pipeline constitute political advertising that cannot be charged to ratepayers. However, there has been no showing that such expenditures are included in existing rates and the timing of the advertising demonstrates otherwise. The expenditures occurred after Kentucky-American filed its last rate case on June 29, 1994.<sup>1</sup> The AG, Talwalkar and all other parties entered into a stipulation and settlement of that rate case and any advertising not chargeable to ratepayers was presumably considered during their negotiations. However, to ensure that expenditures on political advertising are not included in future rates, Kentucky-American should isolate such

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<sup>1</sup> Case No. 94-197, Notice of Adjustment of the Rates of Kentucky-American Water Company.

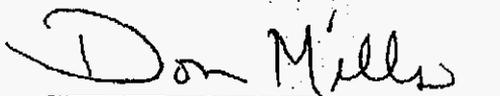
expenditures so they are readily identifiable should they appear in a subsequent rate case base period or test period.

IT IS THEREFORE ORDERED that:

1. The AG's motion to compel be and it hereby is denied.
2. Talwalkar's complaint be and it hereby is dismissed.
3. Kentucky-American shall keep its books and records in such form that any expenditures for political advertising can be readily identified.

Done at Frankfort, Kentucky, this 3rd day of March, 1995.

ATTEST:

  
Executive Director