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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: 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 (Deltona); Hernando County by SPRING HILL UTILITIES (Deltona); and Volusia County by DELTONA LAKES UTILITIES (Deltona)	DOCKET NO. 920199-WS FILED: April 1, 1996

BRIEF OF CITRUS COUNTY BOARD OF COUNTY COMMISSIONERS CONCERNING IMPACT OF GTE CASE ON RECONSIDERATION

The Board of County Commissioners of Citrus County ("Citrus County"), by and through their undersigned counsel, in response to the Florida Public Service Commission's order allowing briefs on the impact of the Florida Supreme Court's opinion in GTE Florida, Inc. v. Clark, No. 85,776 (Fla. February 29, 1996) on the instant case after denial of Southern States Utilities, Inc.'s Motion for Reconsideration, in the interest of administrative economy and relief to the consumer finances involved in this case, adopts the brief of the Sugarmill Woods Civic Association, Inc. in its entirety with the following additional comments.

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1. The uniform rates overturned by the First District Court of Appeal were not requested by SSU, but were approved by Commissioners Beard and Clark with virtually no debate or discussion.

2. Citrus County obtained a stay of the final order, which would have allowed SSU to continue charging interim rates that were in excess of the final rates. Had SSU allowed the stay to remain in place pending the appeal it would have recovered all of its revenue requirement with

no risk of loss. Instead, SSU chose of its own volition to demand the lifting of the stay and then fought the customers' attempts to have the stay reimposed by the First District Court of Appeal. In short, SSU purposefully and effectively foiled Citrus County's and Sugarmill Woods Civic Association, Inc.'s efforts to protect the utility and them from financial loss.

3. The unnecessary imposition of uniform rates for some two years caused customers at Sugarmill Woods and a clear majority of SSU's customers to pay huge subsidies over and above their own costs of service. These subsidies, plus accrued interest, now exceed $8 million.

4. The customers benefitting from the subsidies did not ask to be so advantaged and, presumably, in the case of most, if not all, had no knowledge that they were being benefitted at the expense of other customers. (Recall that SSU had not petitioned for the subsidy-prone rates and no customers had any notice that they would either be benefitted by the rates or suffer a detriment). Unlike SSU, which affirmatively opted for the risk of electing uniform rates and could have fully protected itself from financial loss through the appropriate security, the customers temporarily advantaged by uniform rates were not aware of the advantage and could take no measures to protect themselves from the adverse impact of rate surcharges they couldn't dream they might face.

5. Now SSU insists that the other customers, not it, should be forced to find the money necessary to make the subsidy payers whole as the result of its decision. This position is totally unfair, but completely consistent with SSU's tactic of pitting one group of customers against the other. We will undoubtedly hear more vocal complaints from the presumptive recipients of SSU's political campaign contributions that no refunds are preferable to their constituents having to pay surcharges. That alienation of one system's customers against another

must cease and this Commission should not continue to abet it by any continued suggestions that some groups of customers are selfish as a result of not wanting to pay subsidies or that uniform rates and their inherent subsidies somehow benefit water conservation. The truth is that subsidies are being forced from widows and others on Medicaid, often to the benefit of affluent communities or to businesses. The truth is that random water conservation improperly achieved by charging some customers rates in excess of their costs is squandered by encouraging wasteful consumption by charging others rates at less than cost, often in water poor areas.

6. The GTE decision, as pointed out in Sugarmill Woods' brief, is clearly distinguishable from the instant case. It appears equally clear that this Commission can, and must, exercise a measure of discretion in determining how it interprets the impact of GTE on the present proceeding. The Commission can, and should, exercise its discretion by leaning in the direction that is consistent with its Order on Remand and its decision denying SSU's Motion for Reconsideration. Such a determination would give the benefit of the doubt to the consumers for once, who are all unwilling pawns, and not the utility, which is responsible for the apparent dilemma.

7. There is absolutely no legal basis nor necessity for reopening the record to attempt to confirm the correctness of uniform rates. As pointed out by Sugarmill Woods, there are at least six other remaining issues on appeal not addressed by the First District Court of Appeal in its reversal. Reopening the record cannot deal with these unresolved issues and it is far too late in the game to attempt doing so. The record should be left closed and the Order Denying Reconsideration published.

8. Given the discretion to either economically harm customers through the imposition of a surcharge or requiring the utility to fulfill the conditions of its bond and otherwise face the financial consequences of its actions, which way should the Commission lean? To merely ask the question should answer it. The customers of this utility should not collectively have to fear that, given any possible excuse for doing so, the majority of this Commission will side with the utility.

9. Opting for a customer surcharge necessarily invites the resulting conclusion that one customer group should not have to suffer to make refunds to another. That view, in turn, can easily lead to the twisted conclusion that any refunds may be inappropriate. Such a conclusion is not logically or legally defensible. There is nothing in the GTE opinion to even remotely suggest a basis for the Commission reversing its decision to compel refunds to the customers unlawfully overcharged for some two years. The decision is made and the time for reconsideration past. More importantly, the order requiring refunds was legally and equitably correct. This Commission should reject any notion that the customers due refunds can now be denied the same.

10. This Commission could pleasantly surprise all of SSU's customers by concluding that the GTE opinion is distinguishable from the instant case and that no action is required affecting the decision denying SSU's Motion for Reconsideration. It should do so. Failure to so act will further burden the customers who have fought long and hard and at great expense to achieve the refunds and rate reductions that are at hand. Furthermore, acting in SSU's interest will completely disadvantage those customers who have no representation in this contrived uniform rate fight.

WHEREFORE, the Board of County Commissioners of Citrus County adopt the brief filed by the Sugarmill Woods Civic Association, Inc. on this issue and request the Florida Public

Service Commission find that the decision in GTE Florida, Inc. v. Clark, No. 85,776 (Fla. February 29, 1996) has no implications requiring modification to any order or decision in the instant docket, and that it immediately publish its order Denying SSU's Motion for Reconsideration, which will require SSU to make the refunds found owing.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and accurate copy of the foregoing has been furnished by U.S. Mail, postage prepaid, this 1st day of April, 1996 to the following persons:

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