BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Southern States Utilities, Inc.
Appellant/Cross-Appellee

Docket No.: 920199-WS

vs.

Florida Public Service Commission,
Appellee,

and

Sugarmill Woods Civic Association
and Citrus County,
Appellees/Cross-Appellants.
_____/

RESPONSE TO MOTION FOR STAY
OF ORDER NO.: PSC-96-1046-FOF-WS

Sugarmill Woods Civic Association and Citrus County object to SSU's Motion for Stay of the Commission's Refund Order (Number: PSC-96-1046-FOF-WS).

As the Supreme Court observed in GTE, Florida, Inc. vs. Deason, 642 So.2d 545 (Fla. 1994), "Utility rate making is a matter of fairness. Equity requires that both rate payers and utilities be treated in a similar manner." 668 So. 2d at 972.

This is the second appeal of the present case. In the first appeal, Sugarmill Woods Civic Association and Citrus County had an automatic stay of the order by virtue of the Florida appellate rules. SSU moved to have the stay set aside, this Commission granted that motion and thus allowed the order to go into effect during the pendency of the appeal. This meant that the customers had to pay money that they would not owe if the appeal was successful.

ACK ✓
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APP Smith
CAF
CMU
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OTH

Now, basic fairness requires that the order, in this instance in favor of the rate payers, be permitted to go into effect pending the appeal just as the prior order went into effect pending the appeal. To do otherwise would signify that stays are given only to protect the utility. Here, if it was proper to implement the order during the pendency of appeal in the first appeal, then it is proper to implement the order on appeal pending this appeal.

SSU may argue that if the order is implemented, then it will be unable to recapture all of the refunds if appeal is successful. This argument should be rejected. In the extremely unlikely event that SSU's appeal is successful, it can surcharge the customers who receive excess refunds.

SSU may argue that some of these customers may die or move away or otherwise cease to become customers in the interim. This problem is inherent in implementing an order pending appeal. Some customers paid excess rates during the pendency of the first appeal may also die, move away or cease to be while the second appeal is pending. These customers may never enjoy the refund that is due them if it is further delayed by the granting of a stay. As the commission is well aware, many of these customers are senior citizens who legitimately fear that they will no longer be around when this matter is ever finally settled.

In the event that the Commission determines that a stay should be granted, despite these basic fairness issues, a bond, rather than a corporate undertaking, should be required. SSU has

previously argued to the Commission that the reversal of uniform rates has had a negative impact on its finances. Moreover, the financial statements attached to the Motion for Stay do not demonstrate that SSU has sufficient shareholder equity in excess of its liabilities, or sufficient cash on hand to make the required refund. For example, the first page of appendix A showed cash of approximately $898,000.00. Page 2(a) shows equity capital of $78,000,000.00 and long term debt of $80,000,000.00. To accept a corporate undertaking would allow SSU to place the refund liability on a par with other debts, for example, the $25,000,000.00 in notes and accounts payable to "associated companies". The customer's whose funds have already wrongly gone into company coffers should be protected and given a preferred position by bond. Thus, if SSU's finances take a substantial downturn during the pendency of this appeal, the customers must be protected. The Commission should recall that the first appeal has taken approximately 3.5 years to resolve, and a similar period for the second appeal should obviously allow time for massive changes in SSU's finances.

Respectfully submitted,

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Cypress and Oaks Villages
Association, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the above and foregoing has been furnished via U.S. Mail, postage prepaid, this 13th day of September, 1996 to the following persons:

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