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February 28, 1997

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. 920199-WS

Dear Ms. Bayo:

Enclosed herewith for filing in the above-referenced docket on behalf of Florida Water Services Corporation ("Florida Water") are the following documents:

1. Original and fifteen copies of Florida Water Services Corporation's Motion for Reconsideration of Order No. PSC-97-0175-FOF-WS;

2. Original and fifteen copies of Florida Water Services Corporation's Motion for Stay of Order No. PSC-97-0175-FOF-WS Pending Disposition of Motion for Reconsideration; and

ACK    3. A disk in Word Perfect 6.0 containing a copy of the documents.

AFA   

APP   1   Please acknowledge receipt of these documents by stamping the extra copy of this letter "filed" and returning the same to me.

CAF   

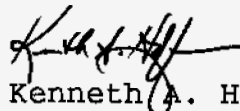
CMU    Thank you for your assistance with this filing.

CTR   

Sincerely,

EAG   

LEG   1  



LIN   5  

Kenneth A. Hoffman

OPC   

KAH/yl

RCI cc: All Parties of Record

SEC   

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

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FPSC-RU OF RECORDS

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application of )  
Southern States Utilities, )  
Inc. and Deltona Utilities, )  
Inc. for Increased Water and )  
and Wastewater Rates in Citrus, )  
Nassau, Seminole, Osceola, Duval, )  
Putnam, Charlotte, Lee, Lake, )  
Orange, Marion, Volusia, Martin, )  
Clay, Brevard, Highlands, )  
Collier, Pasco, Hernando, and )  
Washington Counties. )

Docket No. 920199-WS

Filed: February 28, 1997

FLORIDA WATER SERVICES CORPORATION'S  
MOTION FOR RECONSIDERATION OF  
ORDER NO. PSC-97-0175-FOF-WS

Florida Water Services Corporation ("Florida Water"), formerly Southern States Utilities, Inc., by and through its undersigned counsel and pursuant to Rule 25-22.060, Florida Administrative Code, hereby moves the Commission to reconsider that portion of Order No. PSC-97-0175-FOF-WS granting the Office of Public Counsel's ("OPC") Alternative Motion to Modify Stay thereby requiring Florida Water to implement modified stand-alone rates for its Hernando County facilities. In support of this Motion, Florida Water states as follows:

A. BACKGROUND FACTS

1. In Citrus County v. Southern States Utilities, 656 So.2d 1307 (Fla. 1st DCA 1995), the court reversed the Commission's establishment of a statewide uniform rate structure for Florida Water while affirming the Commission approved final revenue requirements. On remand from the court, the Commission replaced the uniform rate structure with the modified stand-alone rate structure originally proposed by Florida Water in the rate case.

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FPSC-RECORDS/REPORTING

The Commission initially ordered the implementation of modified stand-alone rates and required refunds to customers who paid higher rates under the uniform rate structure during the pendency of the appeal pursuant to Order No. PSC-95-1292-FOF-WS issued October 19, 1995.<sup>1</sup> Subsequently, by Order No. PSC-96-0406-FOF-WS issued March 21, 1996<sup>2</sup> the Commission vacated the determinations in its October 19, 1995 Order based on its concern that its refund requirement violated the then recently issued decision of the Florida Supreme Court in GTE Florida, Inc. v. Clark, 668 So.2d 971 (Fla. 1996). Following the submission of briefs addressing the refund issue, on August 14, 1996, the Commission issued Order No. PSC-96-1046-FOF-WS,<sup>3</sup> requiring Florida Water to make the above described refunds and incorporating and reaffirming its other decisions, including the implementation of a modified stand-alone rate structure, reflected in the October 19, 1995 Order. On November 1, 1996, Florida Water filed a Notice of Appeal of Order No. PSC-96-1046-FOF-WS with the First District Court of Appeal.

2. In the meantime, in January 1996, Florida Water filed tariffs reflecting an interim rate increase approved by the Commission pursuant to Order No. PSC-96-0125-FOF-WS issued January 25, 1996.<sup>4</sup> The interim rate increase was based on the Commission-approved modified stand-alone rate structure. However, the interim

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<sup>1</sup>See 95 F.P.S.C. 10:371 (1995).

<sup>2</sup>See 96 F.P.S.C. 3:324 (1996).

<sup>3</sup>See 96 F.P.S.C. 8:198 (1996).

<sup>4</sup>See 96 F.P.S.C. 1:475 (1996).

rate increase and modified stand-alone rate structure was not implemented for the Spring Hill facilities in Hernando County as such facilities (together with Florida Water's facilities in Hillsborough and Polk Counties) had been removed from the Docket No. 950495-WS rate case by the Commission pursuant to Order No. PSC-95-1385-FOF-WS issued November 7, 1995.<sup>5</sup>

3. On September 3, 1996, Florida Water filed a Motion for Stay of Order No. PSC-96-1046-FOF-WS in its entirety. By Order No. PSC-96-1311-FOF-WS, issued October 28, 1996,<sup>6</sup> Florida Water's Motion for Stay was granted. On November 12, 1996, OPC filed a motion for reconsideration and clarification or, in the alternative, motion to modify stay. On November 18, 1996, Florida Water timely filed its response to OPC's motion.

4. On February 14, 1997, the Commission issued Order No. PSC-97-0175-FOF-WS, the order at issue, denying OPC's Motion for Reconsideration but granting OPC's Alternative Motion to Modify Stay. The Commission modified the stay by removing that portion of the August 14, 1996 Order requiring the implementation of modified stand-alone rates for the Spring Hill facilities from the October 28, 1996 Order granting a plenary stay. As a result, the stay was modified to include only that portion of the August 14, 1996 Order requiring refunds.

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<sup>5</sup>See 95 F.P.S.C. 11:301 (1995).

<sup>6</sup>See 96 F.P.S.C. 10:365 (1996).

**B. ARGUMENT**

5. Florida Water submits that the Commission made a mistake of law in failing to apply the mandatory provisions of Rule 25-22.061(1)(a), Florida Administrative Code. That rule provides in pertinent part:

(1)(a) When the order being appealed involves the refund of monies to customers or **a decrease in rates charged to customers, the Commission shall** upon motion filed by the utility or company affected, grant a stay pending judicial proceedings. (Emphasis supplied).

6. The implementation of modified stand-alone rates for the Spring Hill facilities results in a reduction of rates for the Spring Hill customers. In the October 28, 1996 Order granting Florida Water's Motion for Stay, the Commission affirmed its consistent interpretation and application of Rule 25-22.061(1)(a) as a rule which is mandatory in nature.<sup>7</sup>

7. The only purported justification given by the Commission for deviating from the mandatory requirements of the rule is the Commission statement of its intent "... to require the implementation of the modified stand-alone rates for all of the facilities in Docket No. 920199-WS."<sup>8</sup> It is clear that pursuant to Order Nos. PSC-95-1292-FOF-WS and PSC-96-1046-FOF-WS, the Commission intended to impose a refund requirement on Florida Water and the requirement that Florida Water implement modified stand-

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<sup>7</sup>See also, Order No. PSC-97-0099-FOF-WS issued January 27, 1997 in Docket No. 950495-WS, at 2-3.

<sup>8</sup>Order No. PSC-97-0175-FOF-WS, at 4.

alone rates for all of the Docket No. 920199-WS facilities. Florida Water does not dispute what action was actually taken by the Commission pursuant to these orders. At the same time, it should also be undisputed since it is uncontroverted fact that the only rate structure issue on appeal is the Spring Hill rate structure. Like the refund requirement, the reduction of rates for the Spring Hill facilities under the modified stand-alone rate structure squarely falls within the express language of Rule 25-22.061(1) (a) requiring that such decisions be stayed upon motion of Florida Water and the posting of adequate security. The rule is simple and clear -- a final order requiring a reduction in rates must be stayed upon the filing of a motion requesting a stay by the utility and the posting of adequate security. Florida Water has met these conditions precedent to implementation of the rule and the Commission's failure to adhere to the rule is a mistake of law which must be corrected on reconsideration.

8. Nor did OPC provide any basis for deviation from the mandatory requirements of Rule 25-22.061(1) (a). During the January 21, 1997 oral argument on its motion, OPC argued that the rule should not apply because the Commission should view the reduction of rates for the Spring Hill facilities together with the adjustment to rates under the modified stand-alone rate structure for all of the Docket No. 920199-WS facilities thereby rendering the October 19, 1995 and August 14, 1996 orders revenue neutral. OPC's argument is disingenuous. In Docket No. 950495-WS, OPC has requested reconsideration of the Commission's final determination

that there be no refunds of interim revenue requirements to the ratepayers in Docket No. 920199-WS. OPC's motion for reconsideration is premised on its contention that potential interim revenue refunds should be calculated on a separate water and wastewater facility basis. Now, OPC has switched gears and would like the Commission to consider Florida Water's revenue requirements for the purposes of modifying the stay on a combined basis. OPC's argument simply lacks credibility in light of OPC's conflicting positions and essentially asks the Commission to ignore the fact that the only rates at issue in the appeal of Order No. PSC-96-1046-FOF-WS are the Spring Hill rates.

9. In addition, OPC failed to avail itself of its only available remedy which could possibly justify a deviation from the requirements of Rule 25-22.061(1)(a). Section 120.542, Florida Statutes (Supp. 1996), authorizes a party to apply for a variance or waiver of an agency rule. OPC failed to avail itself of this remedy in seeking a modification of the Commission's application of the mandatory requirements of Rule 25-22.061(1)(a). The Commission clearly made a mistake of law by ordering what amounts to a variance or waiver of Rule 25-22.061(1)(a) where no such request was made by OPC and the requirements which must be fulfilled before granting a variance or waiver under Section 120.542(5), Florida Statutes (Supp. 196) were not even raised, and certainly not satisfied, by OPC in its motion to modify stay.

WHEREFORE, for the foregoing reasons, Florida Water respectfully requests that the Commission reconsider Order No. PSC-

97-0175-FOF-WS and grant a stay of Order No. PSC-96-1046-FOF-WS in full, including a stay of the requirement that Florida Water implement modified stand-alone rates for its Spring Hill facilities, pending disposition of the appeal.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of Florida Water Services Corporation's Motion for Reconsideration of Order No. PSC-97-0175-FOF-WS was furnished by U. S. Mail to the following this 28th day of February, 1997:

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