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April 15, 1997

Blanca S. Bayo, Director
Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

Re: Docket No. 950495-WS

Dear Ms. Bayo:

Enclosed for filing in the above-references docket are the original and 15 copies of TIHA's Response to Motion to Dismiss in the above-referenced docket.

Please indicate the time and date of receipt on the enclosed duplicate of this letter and return it to our office.

Sincerely,

Harold McLean
Associate Public Counsel

- ACK _____
- AFA 1 _____
- APP 2 HM:bsr
- CAF _____
- CMU _____ Enclosures
- CTR _____
- EAG _____
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- SEC Willis _____
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FPSC-RECORDS/REPORTING

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for a rate increase 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 by Southern States Utilities, Inc.

Docket No. 950495-WS

Filed: April 15, 1997

RESPONSE TO MOTION TO DISMISS

The Tropical Isles Homeowners Association (TIHA) respond to Florida Water Services Corporation's (FWSC) April 7th, 1997 Motion to Dismiss Petitions and Offer to Take Over Facilities. TIHA's response is directed to each section of FWSC's motion.

A. Background

1. As alleged in TIHA's original petition, and admitted in FWSC's instant motion, FWSC was ordered to file a report with the commission regarding the feasibility of usage sensitive wastewater rates for the TIHA residents;

2. FWSC provided a report to Staff Counsel without any copy to any of the parties of record. As may be seen by reference to Exhibit 'A' of the instant petition, the report was authored and sent to Staff Counsel by Matthew Feil, among the counsel of record for the former Southern States Utilities, replete with attachments, but devoid of copies

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to any affected party and devoid of copies to any party of record¹;

3. Commission Rule 25-22.028 provides in part:

Filing, Service of Documents, and Computation of Time.

(1) Filing. Filing shall be accomplished by submitting the original document and the appropriate number of copies, as provided by rule, to the Division of Records and Reporting (Division).

(2) Service. A copy of all documents filed pursuant to these rules shall be served on each of the parties no later than the date of filing. In the event that the parties are so numerous that this requirement is onerous, the Commission on motion may limit the number of copies to be served. Service by mail shall be completed upon mailing.

FWSC's "providing" the report to staff counsel and to no one else falls far short of the simple language in the order which required FWSC to *file* such a report with the commission;

4. FWSC's failure to follow the simple language of the rule is not without consequence: failure to correctly file the report coupled with the failure to provide copies to any affected party or party of record deprives all affected persons an effective point of entry into the administrative process to contest the adequacy and/or accuracy of the report.

B. The petition to Intervene

5. Commission rule 25-22.039 permits persons, other than the original parties to a pending proceeding, who have a substantial interest in the proceeding, to intervene at

¹ On April 9th, 1997, FWSC by means of a letter to the Director of Records and Reporting attempt to cure and apparently conceded the filing deficiency--well beyond the 120 day time period established by the commission in their order.

any point in time up until five days before the final hearing. While it is alleged that this rule should work to bar TIHA's petition, were it to do so, it would prevent a point of entry to TIHA to raise an issue as to whether FWSC complied with the provisions of Order No. PSC-96-1320-FOF-WS which are of particular interest to TIHA and which affect only the interests of TIHA. The special and substantial interests now addressed by TIHA arose as a result of the referenced order. TIHA did not know and could not have known that the commission would impose four separate requirements on FWSC, each of which (had they been complied with) would have benefited TIHA. TIHA's point of entry into the administrative process arose when the referenced order required FWSC to take steps to ascertain the feasibility of obtaining water consumption data from Ft. Pierce and not before. To now bar TIHA's intervention for not having intervened before their substantial interests arose is an absurdity and deprives it of a meaningful point of entry into the administrative process.

Moreover, TIHA's petition to intervene specifically asks for a hearing designed to establish that FWSC did not comply with the commission order, that FWSC has not diligently sought billing information from the city of Ft. Pierce, and to establish a wastewater rate for TIHA based upon the data from Ft. Pierce. TIHA's petition is in anticipation of and prior to that hearing.

C. Participation in Docket 970409-WS is an inadequate remedy.

On April 1, 1997, staff initiated a docket in apparent response to Order No. PSC-96-1320-FOF-WS. If TIHA's allegation, which in substance says that FWSC failed to seek water consumption data from FT. Pierce, both before and after the order, is taken

as true (for purposes of a motion to dismiss, it *must* be taken as true) the commission cannot address the failure of FWSC to obtain the data in a new docket, because its authority over the rates charged to TIHA residents will run prospectively from what ever date the commission chooses to assert jurisdiction. TIHA customers are entitled to rate relief from the time of the interim order, and have so alleged, and petitioned the commission for such relief.

The commission cannot utilize the new docket established by staff to reach back to the time of interim rates to establish the rates to which TIHA has been entitled all along. For this reason, TIHA's participation in Docket 970409-WS cannot provide TIHA with an adequate remedy, and thus does not provide TIHA a meaningful point of entry into the administrative process.

Lastly, TIHA's petition seeks sanctions against FWSC for failing to comply with Order No. PSC-96-1320-FOF-WS, a matter which the commission may address in Docket No. 950495-WS. Neither the suggested Docket title, nor the supporting documentation of the Staff-requested New docket 970409-WS includes any mention or other consideration of the extent to which FWSC has complied with Order No. PSC-96-1320-FOF-WS, a lawful order of the commission. It is doubtful that the commission can in the new docket penalize or take other appropriate sanction against FWSC for failure to comply with a commission order in Docket No. 950495-WS.

The commission has before it in TIHA an interested and affected party which has by way of petition demanded a hearing as to whether a regulated utility has complied with a lawful order of the commission. TIHA's petition to intervene and TIHA's petition

for other relief is the only point of entry by which TIHA's concerns may be adequately addressed by the commission.

Respectfully Submitted,
TIHA, by



Harold McLean
Associate Public Counsel
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111 W. Madison St.

Attorney for the Citizens
of the State of Florida

**CERTIFICATE OF SERVICE
DOCKET NO. 950495-WS**

I HEREBY CERTIFY that a correct copy of the foregoing has been furnished by U.S. Mail or *hand delivery to the following party representatives on this 15th day of April, 1997.

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