

FLORIDA PUBLIC SERVICE COMMISSION
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AUGUST 28, 1997

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TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYO)

FROM: DIVISION OF LEGAL SERVICES (JABER) *JABER*
DIVISION OF WATER & WASTEWATER (WILLIS, RENDELL, CHASE) *WILLIS* *RENDELL* *CHASE*

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 (DELTONA); HERNANDO COUNTY BY SPRING
HILL UTILITIES (DELTONA); AND VOLUSIA COUNTY BY DELTONA
LAKES UTILITIES (DELTONA)

AGENDA: SEPTEMBER 9, 1997 - REGULAR AGENDA - INTERESTED PERSONS
MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: S:\PSC\LEG\WP\920199IT.LAJ

CASE BACKGROUND

On May 11, 1992, Florida Water Services Corporation, formerly known as Southern States Utilities, Inc. (FWSC, SSU, or utility), filed an application to increase the rates and charges for 127 of its water and wastewater service areas regulated by this Commission. By Order No. PSC-93-0423-FOF-WS, issued March 22, 1993, the Commission approved an increase in the utility's final rates and charges, basing the rates on a uniform rate structure. On September 15, 1993, Commission staff approved the revised tariff sheets and the utility proceeded to implement the final rates.

Notices of appeal of Order No. PSC-93-0423-FOF-WS were filed with the First District Court of Appeal by Citrus County and Cypress and Oak Villages (COVA), now known as Sugarmill Woods Civic Association (Sugarmill Woods) and the Office of Public Counsel

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DOCKET NO. 920199-WS
DATE: AUGUST 28, 1997

(OPC). On October 19, 1993, the utility filed a Motion to Vacate Automatic Stay, which the Commission granted by Order No. PSC-93-1788-FOF-WS, issued December 14, 1993.

On April 6, 1995, Order No. PSC-93-0423-FOF-WS was reversed in part and affirmed in part by the First District Court of Appeal. Citrus County v. Southern States Utils., Inc., 656 So. 2d 1307 (Fla. 1st DCA 1995). On October 19, 1995, Order No. PSC-95-1292-FOF-WS was issued, Order Complying with Mandate, Requiring Refund, and Disposing of Joint Petition (decision on remand). By that Order, FWSC was ordered to implement a modified stand-alone rate structure, develop rates based on a water benchmark of \$52.00 and a wastewater benchmark of \$65.00, and to refund accordingly. On November 3, 1995, FWSC filed a Motion for Reconsideration of Order No. PSC-95-1292-FOF-WS. At the February 20, 1996, Agenda Conference, the Commission voted, inter alia, to deny FWSC's motion for reconsideration.

On February 29, 1996, subsequent to the Commission's vote on the utility's motion for reconsideration but prior to the issuance of the order memorializing the vote, the Supreme Court of Florida issued its opinion in GTE Florida, Inc. v. Clark, 668 So. 2d 971 (Fla. 1996). By Order No. PSC-96-0406-FOF-WS, issued March 21, 1996, after finding that the GTE decision may have an impact on the decision in this case, the Commission voted to reconsider on its own motion, the entire decision on remand.

By Order No. PSC-96-1046-FOF-WS, issued August 14, 1996, the Commission affirmed its earlier determination that FWSC was required to implement the modified stand-alone rate structure and make refunds to customers. However, the Commission found that FWSC could not impose a surcharge to those customers who paid less under the uniform rate structure. The utility was ordered to make refunds (within 90 days of the issuance of the order) to its customers for the period between the implementation of final rates in September, 1993, and the date that interim rates were placed into effect in Docket No. 950495-WS.

On September 3, 1996, FWSC notified the Commission that it had appealed Order No. PSC-96-1046-FOF-WS to the First District Court of Appeal. On that same date, FWSC filed a motion for Stay of Order No. PSC-96-1046-FOF-WS. By Order No. PSC-96-1311-FOF-WS, issued October 28, 1996, the Commission granted FWSC's motion for stay. FWSC implemented the modified stand-alone rate structure for

DOCKET NO. 920199-WS
DATE: AUGUST 28, 1997

the facilities that were included in the recent rate case, Docket No. 950495-WS, during interim. However, the Spring Hill facility was not included in Docket No. 950495-WS and the rate structure for that facility was not changed at that time. On November 12, 1996, OPC filed a Motion for Reconsideration and Clarification or, in the Alternative, Motion to Modify Stay, wherein OPC essentially requested that the Commission order the utility to implement modified stand-alone rates for the Spring Hill customers. By Order No. PSC-97-0175-FOF-WS, issued February 14, 1997, the Commission denied OPC's motion for reconsideration and clarification, but granted OPC's alternative motion to modify the stay. The Commission modified Order No. PSC-96-1046-FOF-WS to reflect that only FWSC's refund obligation was stayed pending appeal, and that FWSC was required to implement the modified stand-alone rate structure for FWSC's Spring Hill facility in Hernando County, consistent with prior Commission Orders Nos. PSC-95-1292-FOF-WS and PSC-96-1046-FOF-WS.

On February 28, 1997, FWSC filed a Motion For Reconsideration of Order No. PSC-97-0175-FOF-WS and Motion For Stay of Order No. PSC-97-0175-FOF-WS Pending Disposition of Motion for Reconsideration, which the Commission denied by Order No. PSC-97-0552-FOF-WS, issued May 14, 1997. On June 17, 1997, the First District Court of Appeal issued its opinion in Southern States Utils., Inc. v. Florida Public Service Comm'n, reversing the Commission's order implementing the remand of the Citrus County decision.

On July 16, 1997, Senator Ginny Browne-Waite and Mr. Morty Miller filed a Petition to Intervene and Motion to Compel Rate Reductions and Rate Refunds and for Maximum Penalty. At the August 5, 1997 Agenda Conference, the Commission granted Sen. Browne-Waite and Mr. Miller's petition to intervene. The Commission required the utility to provide all parties and Staff, by August 29, 1997, with information regarding the amount of potential refund and surcharge, with and without interest. The Commission also allowed all parties to file briefs by September 30, 1997 on the appropriate action the Commission should take in light of the Southern States decision. Accordingly, the Commission chose not to consider the motion to compel refunds pending the filing of briefs. Also on August 5, 1997, Spring Hill Civic Association, Inc., Sugarmill Manor, Inc., Cypress Village Property Owners Association, Inc., Harbor Woods Civic Association, Inc., Hidden Hills Country Club Homeowners Association, Inc., Amelia Island Community Association,

DOCKET NO. 920199-WS
DATE: AUGUST 28, 1997

Resident Condominium, Residence Property Owners Association, Amelia Surf and Racquet Property Owners Association and Sandpiper Association (petitioners) filed a Petition to Intervene and Motion to Compel Refunds. This recommendation addresses the August 5th Petition to Intervene.

DOCKET NO. 920199-WS
DATE: AUGUST 28, 1997

DISCUSSION OF ISSUES

ISSUE 1: Should the petition to intervene filed by Spring Hill Civic Association, Inc., Sugarmill Manor, Inc., Cypress Village Property Owners Association, Inc., Harbor Woods Civic Association, Inc., Hidden Hills Country Club Homeowners Association, Inc., Amelia Island Community Association, Resident Condominium, Residence Property Owners Association, Amelia Surf and Racquet Property Owners Association and Sandpiper Association (petitioners) be granted?

RECOMMENDATION: Yes. The petition to intervene should be granted. The Motion to Compel Refunds should be addressed at a subsequent agenda conference after the parties have filed briefs consistent with the Commission's August 5, 1997, decision. (JABER)

STAFF ANALYSIS: In their petition to intervene, petitioners allege that their substantial interests are affected in that they are customers of SSU and that they paid the uniform rates approved by the Commission. The petitioners assert that they are entitled to a refund of the difference between the modified stand-alone rates and the uniform rates. They believe that their ability to receive the refund of the uniform rates depends entirely upon the Commission imposing surcharges on the customer groups who underpaid for services. The petitioners further assert that the First District Court of Appeal has stated that the Commission erred in denying the petitions to intervene as untimely because the issue of potential surcharge and the applicability of GTE did not arise until the remand proceeding. Three of the petitioners, the Spring Hill Civic Association, Inc., Sugarmill Manor, Inc., and Cypress Village Property Owners Association, Inc. initially requested intervention subsequent to the issuance of Order No. PSC-93-0423-FOF-WS. The Commission denied the request for intervention as untimely pursuant to Rule 25-22.039, Florida Administrative Code. See Order No. PSC-93-1598-FOF-WS, issued November 2, 1993.

On August 12, 1997, Florida Water timely responded to the petition. In its response, the utility asserts that the "clear intent of the court's remand was to grant customers subject to potential surcharges the opportunity to contest the imposition of refunds and thereby avoid potential surcharges. The utility further states that the Southern States court did not authorize the Commission to entertain intervention requests by customers whose interests are already represented in this proceeding.

DOCKET NO. 920199-WS
DATE: AUGUST 28, 1997

In Staff's recommendation which was considered at the August 5, 1997 agenda conference, Staff advised the Commission that its review of the Southern States decision indicates that the Court only directed the Commission to reconsider the petitions to intervene filed by potential surcharge payers. In directing the Commission to reconsider its finding on intervention, the Court directs the Commission "to reconsider its decision denying intervention by these groups (Keystone, Burnt Store, Marion Oaks) and to consider any petitions to intervention filed by other such groups subject to a potential surcharge in this case." (emphasis added). Southern States Utils., Inc., 22 Fla. L. Weekly at D1493.

The Commission denied Staff's recommendation finding that the unique circumstances of this case warranted allowing intervention by all substantially affected individuals at this point. The Commission further believed that the Southern States opinion should not be narrowly interpreted to only allow intervention for potential surcharge payers. In light of the Commission's most recent decision in this regard, Staff recommends that the petition to intervene filed on August 5, 1997 by Spring Hill Civic Association, Inc., Sugarmill Manor, Inc., Cypress Village Property Owners Association, Inc., Harbor Woods Civic Association, Inc., Hidden Hills Country Club Homeowners Association, Inc., Amelia Island Community Association, Resident Condominium, Residence Property Owners Association, Amelia Surf and Racquet Property Owners Association and Sandpiper Association, be granted. All parties should furnish copies of future pleadings and other documents that are hereafter filed in this proceeding to Michael Twomey, Esquire at Route 28, Box 1264, Tallahassee, Florida 32310 and Arthur Jacobs, Esquire at P.O. Box 1110, Fernandina Beach, Florida 32035-1110. The Motion to Compel Refunds should be addressed at a subsequent agenda conference after the parties have filed briefs consistent with the Commission's August 5, 1997 decision.

DOCKET NO. 920199-WS
DATE: AUGUST 28, 1997

ISSUE 2: Should the docket be closed?

RECOMMENDATION: The docket should remain open pending final disposition on remand. (JABER)

STAFF ANALYSIS: At the August 5, 1997 Agenda Conference, the Commission voted to require all parties to file briefs by September 30, 1997 on the appropriate action the Commission should take in light of the Southern States decision. Accordingly, this docket should remain open pending receipt of the briefs and final resolution on remand.