FORMAN, KREHL & MONTGOMERY

ATTORNEYS AT LAW

GEORGE J. ALBRIGHT, III**
WM. CRAIG EAKIN
CHARLES R. FORMAN
JOSEPH M. HANRATTY
GERARD S. KREHL
MICHAEL B. MONTGOMERY*
JOHN W. SCRUGGS, JR.
VANESSA THOMAS+

+Admitted in Alabama & Georgia
*Licensed also in Hawaii & California
*Of Counsel
**Also Licensed in D.C.

September 17, 1997

Reply To:

Ocala

Blanco Bayo'
Director of Records and Reporting
Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399

Re: Docket Number: 920199-WS

Dear Ms. Bayo':

In connection with the above-referenced matter enclosed please find Petitioners, Joseph J. DeRouin, Victoria M. DeRouin, Peter H. Heeschen, Elizabeth A. Riordan, Carvell Simpson and Edward Slezak, Petition to Intervene and Motion for Formal Notice to Customers and Request for Extension of Time to File Briefs, along with fifteen copies of each of these pleadings for filing with your office. Said document includes an Amended Service List.

Please feel free to contact me with any questions or comments. Thanking you in advance for your cooperation, I remain

ACK ____
AFA 1
APP 1
CAF ____
CMU ____
CTR ____
EAG ____
LEG 1
LIN 5
OPC ____
RCH ____
WAS 1
OTH ____

Yours truly,

Charles R. Forman

CRF:sbs
Enclosures

320 N.W. THIRD AVE.
P.O. BOX 159
OCALA, FLORIDA 34478
(352) 732-3915
FAX (352) 351-1690
(800) 527-3445

101 E. FAITH TERR.
MAITLAND, FLORIDA 32751
(407) 834-8488
FAX (407) 834-7890

606 BALD EAGLE DR.
MARCO ISLAND, FLORIDA 33969
(800) 527-3445

JUSTICE BLDG. - SUITE 302N
524 S. ANDREWS AVE.
FT. LAUDERDALE, FLORIDA 33301
(954) 522-9441
FAX (954) 522-2076

10501 VALLEY BLVD., STE. 121
EL MONTE, CALIFORNIA 91731
(818) 452-1222

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 Washinton 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 UTILTIES (Deltona)	DOCKET NO.: 920199-WS

PETITION TO INTERVENE

Come now, Petitioners, Joseph J. DeRouin, Victoria M. DeRouin, Peter H. Heeschen, Elizabeth A. Riordan, Carvell Simpson and Edward Slezak, by and through their undersigned attorney, and file this Petition for Leave to Intervene pursuant to Rule 25-22.039, Florida Administrative Code, and state:

1. All notices, pleadings and correspondence should be sent to:

Charles R. Forman
Forman, Krehl & Montgomery
320 Northwest 3rd Avenue
Ocala, Florida 34475
(352) 732-3915

on behalf of Petitioners.

Substantial Interests

2. Petitioners are a customers of Florida Water Services Corporation f/k/a Southern States Utilities, Inc.

3. There are matters pending in this docket regarding refunds and surcharges which will have a substantial financial

impact on Petitioners.

4. In Order No. PSC-96-0406-FOF-WS, the Commission reconsidered its decision in Order No. PSC-95-1292-FOF-WS, which among other things, addressed rate structure and required Southern States Utilities, Inc. to make a refund. It is uncontroverted that the possiblity of the imposition of a surcharge on one group of Southern States Utilities, Inc. customers to finance a refund to other Southern States Utilities, Inc. customers did not arise until 1996, 4 years after the hearing and in wake of the 1996 decision of GTE v. Clark by the Florida Supreme Court. Due to the Florida Supreme Court's decision in GTE Florida, Inc. v. Clark, 668 So. 2d 971 (Fla. 1996), the Commission reconsidered its final order and asked parties to brief the issues surrounding the impact of the GTE decision on this case.

5. As the Commission is well aware, the Office of Public Counsel, which represents the Citizens of the State of Florida, has determined that it cannot protect and advocate on behalf of all customers on certain issues, such as refund and rate design, where different groups of customers have diverse and conflicting positions in the case.

6. Petitioners seek to address issues in this case for which they had no representation until September 12, 1997. Most significantly, unless permitted to intervene herein, certain groups of customers will have no representation on the issue of whether they will be backbilled to effectuate a refund to other customers.

It would be difficult to imagine a more fundamental divergence of interest among customer groups. Yet the group of customers most exposed to injury is without representation on this issue. If the Commission is even to consider such an unprecedented action, all groups of affected customers must be represented and afforded due process. If Petitioners are not permitted to intervene, they will have no representation with respect to this critical issue.

7. Like the rate structure issue in Docket No. 950495-WS and Docket No. 920195-WS, the refund issue in this docket is one which puts varying groups of customers in conflict with each other. This potential conflict was not known until the entry of the Florida Supreme Court's GTE decision and this Commission's reconsideration order. As noted above, despite the conscientious and diligent initiative by Public Counsel to secure representation for all affected interests, appropriate arrangements for outside representation of customers with differing positions could not be made until September 12, 1997.

8. The Commission's disposition of the implementation of a refund, if any, and other rate structure issues, including but not limited to accrued interest, if any, will affect the substantial interests of the Petitioners under the standard set out in Agrico Chemical Co. v. Department of Environmental Regulation, 406 So. 2d 478 (Fla. 2d DCA 1981). Agrico requires a showing of (1) injury in fact and (2) that such injury is of the type the proceeding is designed to protect. As to the first portion of the Agrico test,

Petitioners will clearly be harmed if the Commission implements the refund mechanism advocated by SSU and may be harmed by the ultimate rate design the Commission orders. As to the second part of the test, it is clear that in a rate case proceeding, ratepayer's interests are to be protected. Petitioners' interests will not be protected if they are not represented in this docket.

9. Petitioners are aware that this case has progressed to final hearing on remand and that they were not parties to the proceeding. However, as noted above, outside counsel has only recently been retained to represent Petitioners. Perhaps more importantly, the manner in which the required refund will be implemented may greatly impact Petitioners; especially, given the fact that SSU advocates collecting money from Petitioners to effectuate a refund to other customers - a result unprecedented in Florida history.

10. Petitioners are entitled to participate in these proceedings pursuant to the opinion of the First District Court of Appeals filed June 17, 1997 in Southern States Utilities, Inc. v. Florida Public Service Commission, 22 F.L.W. D1492 (Fla. 1st DCA, June 17, 1997), due to their substantial financial interests in any decision of the Public Service Commission on the refund/surcharge issue.

11. Petitioners are entitled to participate in these proceedings not only in issues previously addressed, but also issues which may be unique to these Petitioners and their

substantial financial interest in any decision of the Public Service Commission on the refund/surcharge issue.

12. Throughout this proceeding the Petitioners have been continuously denied a point of entry as required by Rule 25-22.029, Florida Administrative Code. Furthermore, no notice has been issued which complies with Rule 28-5.111, Florida Administrative Code, from which to determine timely filing for intervention into the proceeding, thereby, denying Petitioners constitutionally guaranteed rights of due process. Florida Optometrics Association v. Florida Department of Professional Regulation Board of Opticianry, 567 So. 2d 928 (Fla. 1990). Moreover, the Appellate Court in its recent opinion filed June 17, 1997 in Southern States Utilities, Inc. v. Florida Public Service Commission, suggests that the Commission approve intervention of all substantially interested persons into this proceeding.

13. Petitioners, as affected customers, are entitled to representation before this Commission.

Disputed Issues of Material Fact

14. Known disputed issues of material fact include, but are not limited to:

A. The appropriate implementation mechanism for a refund, if any is made;

B. The appropriate implementation mechanism for a surcharge, if any is made;

C. The appropriate implementation mechanism for interest that may be due on refunds, if any;

D. The appropriate implementation mechanism for interest that may be collectible on surcharges, if any;

E. The effect of any such mechanism on Petitioners;

F. Recovery of costs of proceedings.

Ultimate Facts Alleged

15. It is Petitioners' position that they will be substantially affected by Commission action in this docket, are previously unrepresented, and thus are entitled to intervene. It is further Petitioners' view that backbilling one group of customers to fund a refund to another group of customers is fundamentally unfair, unduly discriminatory and inequitable.

Statutes

16. The statutes entitling Petitioners to relief are section 120.57, 366.041, 366.06, and 366.07, Florida Statutes.

WHEREFORE, Petitioners request that their Petition to Intervene be granted and that they be accorded full party status.

I HERBY CERTIFY that a true copy of the foregoing has been furnished to the attached list of addressees, by U.S. Mail, this 17th day of September, 1997.

Respectfully submitted,

By _____

Charles R. Forman
FORMAN, KREHL & MONTGOMERY
320 N. W. Third Avenue
Ocala, FL 34478-0159
(352) 732-3915
Fla. Bar No. 229253

ADDRESSEE LIST
(DOCKET NO. 920199-WS)

John R. Howe, Esquire
Charles J. Beck, Esquire
Office of Public Counsel
111 W. Madison Street Room 812
Tallahassee, FL 32399-1400

Lila Jaber, Esquire
Division of Legal Services
Florida Public Service
Commission, Room 370
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

Ms. Anne Broadbent, President
Sugarmill Woods Civic
Association
92 Cypress Boulevard West
Homasassa, FL 34446

Michael S. Mullin, Esquire
Post Office Box 1563
Fernandina Beach, FL 32034

Larry M. Haag, Esquire
County Attorney
111 West Main Street #B
Inverness, FL 34450-4852

Susan W. Fox, Esquire
MacFarlane, Ferguson
Post Office Box 1531
Tampa, FL 33601

Michael B. Twomey, Esquire
Route 28, Box 1264
Tallahassee, FL 31310

Joseph A McGlothlin, Esquire
Vicki Gordon Kaufman, Esquire
117 South Gadsden Street
Tallahassee, FL 32301

Darol H.N. Carr, Esquire
David Holmes, Esquire
Post Office Drawer 159
Port Charlotte, FL 33949

Michael A. Gross, Esquire
Assistant Attorney General
Department of Legal Affairs
Room PL-01, The Capitol
Tallahassee, FL 32399-1050

Arthur J. England, Jr., Esq.
Greenberg, Traurig, Hoffman,
Lipoff, Rosen & Quentel, P.A.
1221 Brickell Avenue
Miami, FL 33131

Brian P. Armstrong, Esq.
Matthew Feil, Esq.
Florida Water Services Corp.
General Offices
1000 Color Place
Apopka, FL 32703

Kenneth A. Hoffman, Esq.
William B. Willingham, Esq.
Rutledge, Ecenia, Underwood,
Purnell & Hoffman, P.A.
215 S. Monroe Street
Suite 420
P.O.Box 551
Tallahassee, FL 32302

Fredrick C. Kramer, Esq.
Suite 201
950 North Collier Blvd.
Marco Island, FL 34145

Arthur Jacobs, Esq.
Jacobs & Peters, P.A.
P.O. Box 1110
Fernandina Beach, FL 32035-
1110

Senator Ginny Brown-Waite
20 N. Main Street #200
Brooksville, FL 34601

Morty Miller
1117 Lodge Circle
Spring Hill, FL 34606