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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 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)	DOCKET NO. 920199-WS FILED: Sept. 22, 1997

RESPONSE OF SENATOR GINNY BROWN-WAITE, MORTY MILLER, SUGARMILL WOODS CIVIC ASSOCIATION, INC., SPRING HILL CIVIC ASSOCIATION, INC., SUGARMILL MANOR, INC., CYPRESS VILLAGE PROPERTY OWNERS ASSOCIATION, INC., HARBOUR WOODS CIVIC ASSOCIATION, INC., AND HIDDEN HILLS COUNTRY CLUB HOMEOWNERS ASSOCIATION, INC. TO PUBLIC COUNSEL'S MOTION TO PROVIDE NOTICE TO CUSTOMERS

Senator Ginny Brown-Waite, Morty Miller, Sugarmill Woods Civic Association, Inc., Spring Hill Civic Association, Inc., Sugarmill Manor, Inc., Cypress Village Property Owners Association, Inc., Harbour Woods Civic Association, Inc., and the Hidden Hills Country Club Homeowners Association, Inc. (the "Customer Associations"), by and through their undersigned attorneys, respond in opposition to the Office of Public Counsel's ("Public Counsel") September 8, 1997 Motion to Provide Notice to Customers. In support of their response, the Customer Associations state:

1. By his Motion to Provide Notice to Customers, Public Counsel asks that the Commission compel Southern States Utilities, Inc. ("SSU") to provide notice to each of its customers informing them of the potential impact on them of refunds and the surcharges ~~cu~~rrently being considered by the Commission. The refunds in question are those the

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Commission previously determined were due members of the Customer Associations and others as the result of them being charged excessive rates for over 28 months through the uniform rate structure approved for SSU in 1993. Specifically, Public Counsel states that

> The notice should be sent to all affected customers, whether they are subject to a potential refund or a potential surcharge, and should provide a mechanism that would allow customers to provide input to the Commissioners before a final decision is made.

2. The same request for customer notice was made by SSU and denied by the full Commission at the August 5, 1997 Agenda Conference. Furthermore, the proposed notice is without purpose given the prior appellate decisions in this case and the fact that the Commission is severely constrained in any relief it now may offer customers in response to the "input" they might provide as a result of the requested notice. The requested notice will only occasion additional delay in a case that has dragged on entirely too long. The Commission should reaffirm its earlier decision that the requested notice not be given to avoid increasing the total to be refunded through additional accrued interest.

3. This case is now in its fifth year. At its outset, no prior specific notice was given to any customers that they might receive windfall revenue subsidies or be forced to pay for the same through uniform rates. Despite Sugarmill Woods' and Citrus County's pleas that the uniform rates not be charged pending appellate review, the uniform rates were, in fact, approved and were charged to customers for in excess of 28 months. Some customers were forced to pay excessive rates for the period, while others unfairly benefitted by receiving the excessive revenues as "subsidies" that were used to reduce their rates to levels that were less than compensatory, less

than the cost of providing the service, and less than the "stand-alone" rates that had specifically been calculated for each such system. The First District Court of Appeal reversed the uniform rate structure as being illegal and remanded to the Commission for further action. The Commission subsequently imposed modified stand-alone rates for SSU and ordered the utility to make refunds from its own monies to the customers who had paid illegally excessive rates pursuant to the uniform rates. The utility appealed the requirement that it have to pay for the refunds and the First District Court of Appeal reversed the Commission's requirement that SSU stockholders pay for the refunds. In doing so, the Court quoted, with approval, the Florida Supreme Court's statement in GTE v. Clark that

> equity applies to both utilities and ratepayers when an erroneous rate order is entered' and '[i]t would clearly be inequitable for either utilities or ratepayers to benefit, thereby receiving a windfall, from an erroneous order.' 668 So. 2d at 973. Contrary to this principle, the PSC in this case has allowed those customers who underpaid for services they received under the uniform rates to benefit from its erroneous order adopting uniform rates. As a legal position, this will not hold water. (Emphasis supplied.)

4. After two reversals in this specific case and reversals in ancillary dockets related to the uniform rate structure and statewide PSC jurisdiction over SSU, there is not room for a great deal of interpretation remaining to the Commission on how to bring closure to this case. Customers who are entitled to refunds are not like a person fortuitously winning the lottery and obtaining a windfall. Rather, they will merely be recovering the money they were wrongfully deprived of for the last four years (they must receive interest for the lost time value of their

money because there is no legal, logical or equitable basis for denying it). It is, as observed by the First District Court of Appeal, the customers who underpaid for their services who benefitted from the Commission's erroneous order. It is these customers who cannot be allowed to keep an inequitable windfall resulting from the erroneous Commission order. The surcharges will not return monies that were used to the advantage of others. Rather, they will merely require this group of customers to pay back monies they had no entitlement to, but which were used to unlawfully lower their utility rates. While the erroneously low rates these customers enjoyed for 28 months were the result of the Commission's error, these customers still obtained an undeserved economic benefit from the mistake. The requirement that surcharges be paid to finance the necessary refunds will merely provide equity amongst the customers by settling overdue accounts. The Commission is left with no alternative to simply ordering the refunds to the customers who were forced to overpay, as well as ordering surcharges for those customers who individually benefitted from the erroneous uniform rate order. All that is left to be determined is over what period the surcharges will be made and assessed (there can be no serious suggestion that, having already been wrongfully deprived of their monies for over four years, the refund customers should be forced to see their funds "dribbled" back to them over the course of years). The amount of interest due is merely a mathematical calculation that requires no hearing or "input."

5. Notice to customers or substantially affected persons in Chapter 120, Florida Statutes, cases is almost always associated with providing those persons with a "point of entry" from which they can take action to preserve their rights. In the instant case, it appears to the Customer Associations that there is nothing left that the wrongfully benefitted customers can

effectively do to protest (input to the Commission) the fact that they must give back the money they wrongfully received. The Customer Associations see the First District Court of Appeal as being very clear on what is now required of the Commission and doubt that the Court will tolerate continuing efforts on the part of the Commission to foil the long over due refunds. If there is nothing the surcharged customers can do by way of providing effective and meaningful input to the Commission on these issues, what purpose is served by giving them additional notice? The Customer Associations are prepared to stipulate that the other customers will not want to pay surcharges or interest on the same. That view is understandable but beside the point. Giving these customers notice at this point will only serve to further delay a case that has festered for too long and to provoke the other customers to anger and action that can have no meaningful impact on the issue of whether the refunds are legally required.

6. The Commission has already ruled that its original notice to customers in this case was sufficient. Specifically, Sugarmill Woods and Citrus County had argued in their motions for reconsideration of the original order adopting uniform rates that they had had no notice of the Commission's consideration of uniform rates. Thus, to take money from them to subsidize other customers would violate their due process rights. The Commission rejected that claim. To be even-handed, the Commission must be consistent in ruling that the prior notice was sufficient as to both groups of customers.

7. Lastly, the Commission should disregard the Public Counsel's request for notice at this point because his office has long since declared a conflict of interest as between those customers forced to pay subsidies and those benefitting from them. Public Counsel has retained special public counsel for customers on both sides of the issue and previously refrained from

taking sides on uniform rate related matters. Public Counsel did not demand that additional notice be provided to subsidy-paying customers at the beginning of this case when uniform rates were first ordered and he should have resisted the urge (albeit well-intended) to request notice at this point and, rather, left that decision to the various parties already represented before this Commission on the issue of uniform rates and the refunds owing from their improper implementation.

WHEREFORE, the Customer Associations request that the Florida Public Service Commission reaffirm its August 5, 1997 denying SSU's request for additional customer notice by denying Public Counsel's Motion to Provide Notice to Customers

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and accurate copy of the foregoing has been furnished by U.S. Mail, postage prepaid, this 22nd day of September, 1997 to the following persons:

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