

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
ORDER NO. PSC-97-1290-PCO -WS
ISSUED: October 17, 1997

The following Commissioners participated in the disposition of this matter:

JULIA L. JOHNSON, Chairman
J. TERRY DEASON
SUSAN F. CLARK
DIANE K. KIESLING
JOE GARCIA

ORDER REQUIRING NOTICE AND
ESTABLISHING NEW DEADLINE FOR FILING BRIEFS

BY THE COMMISSION:

Background

On May 11, 1992, Florida Water Services Corporation, formerly known as Southern States Utilities, Inc. (FWSC 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 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.

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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, we voted, inter alia, to deny FWSC's motion for reconsideration.

On February 29, 1996, subsequent to our vote on the utility's motion for reconsideration but prior to the issuance of the order memorializing the vote, the Florida Supreme Court 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, we voted to reconsider on our own motion, the entire decision on remand.

By Order No. PSC-96-1046-FOF-WS, issued August 14, 1996, we affirmed our earlier determination that FWSC was required to implement the modified stand-alone rate structure and to make refunds to customers. However, we determined that FWSC could not impose a surcharge on 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. This decision was appealed by the utility to the First District Court of Appeal. 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 our order implementing the remand of the Citrus County decision. 22 Fla. L. Weekly D1492 (Fla. 1st DCA 1997).

By Order No. PSC-97-1033-PCO-WS, issued August 27, 1997, we required FWSC to provide an exact calculation by service area of the potential refund and surcharge amounts with and without interest as of June 30, 1997. By that Order, we also allowed all parties to file briefs on the appropriate action the Commission should take in light of the Southern States decision. Since that time, the parties have filed several motions regarding whether the utility should be required to provide notice to its customers of

the Court's opinion and the potential customer impact. After reviewing all of the pleadings, the Southern States decision, and hearing from all of the parties at the October 7, 1997 agenda conference, we have reached the decision set forth below.

Notice Requirement

Summary of Relevant Motions

On September 8, 1997, the Office of Public Counsel (OPC) filed a Motion to Provide Notice to Customers. On September 11, 1997, the utility filed a motion for reconsideration, wherein among other things, it requests that the Commission reconsider its August 5, 1997 decision that a notice to customers is not required. On September 19, 1997, customers DeRouin, Heesch, Riordan, Simpson, and Slezak (customers DeRouin et al.,) filed a Motion for Formal Notice to Customers and Request for Extension of Time to File Briefs. On September 22, 1997, 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. (Brown-Waite et al.,) filed their response to OPC's motion to provide notice. On September 25, 1997, the City of Keystone Heights and the Marion Oaks Civic Association (Keystone/Marion) filed a Motion to Provide Customer Notice and Input from Customers.

In each motion, the parties have requested that we order the utility to provide notice to each of its customers informing them of the potential refund/surcharge impact. OPC asserts that the refund/surcharge report provided by the utility indicates potential refunds/surcharges of hundreds and even thousands of dollars, but that the customers have never received notice of this and have not been provided a mechanism to provide input. In its motion for reconsideration, the utility requests that it be required to provide notice to each current utility customer whose rates were initially established by Order No. PSC-93-0423-FOF-WS of the estimated potential refund/surcharge; that the Commission establish a deadline for intervention or input by the customers; and that briefs be extended four weeks after this deadline. Customers DeRouin, et al., agree but request a 45-day intervention period from the date of notice and a 60-day period thereafter for filing briefs. Keystone/Marion, in their motion, request the Commission to require FWSC to provide notice to each customer that it serves, informing each customer of the impact that any potential surcharge

or refund will have on that customer. Keystone/Marion believe that customers should be provided information meaningful to their individual circumstances. Keystone/Marion also request that public hearings be held so that affected customers may inform the Commission of the impact of any such actions.

Brown-Waite et al.'s response to OPC's motion indicates that the proposed notice is without purpose and will only occasion additional delay in the case. Brown-Waite et al. believe that there is nothing left that the surcharge customers can effectively do to provide input to the Commission.

Conclusion on Notice

We are concerned with the amount of time taken to address the remand decision in this Docket. The Court's mandate was issued July 3, 1997. We note that the Southern States opinion does not mandate that we require notice of the opinion, nor have we required such notice in the past. The opinion does mandate, however, that we grant intervention to potential surcharge payers. We have already interpreted the opinion broadly to allow intervention to all substantially affected persons. See Order No. PSC-97-1033-PCO-WS, issued August 27, 1997. As we stated in that Order, this case is unique. Consistent with our broad interpretation of the Court's opinion, we believe that we should have all of the input we need to make a final decision in this matter. In that regard, we find that a short notice is appropriate. FWSC shall send a customer-specific notice to each affected customer of his/her respective potential refund/surcharge amount by October 22, 1997. In an effort to expedite this process and comply with the mandate, the utility shall use the notice which is attached to this Order, Attachment A, which is incorporated herein by reference.

In consideration of the foregoing, OPC's motion to provide notice to customers, customers DeRouin et al.'s, motion for formal notice, the utility's motion for reconsideration on the notice issue, and Keystone/Marion's motion to provide customer notice and input from customers, are moot. Since this is an implementation of a remand, we find that there is no need for public hearings.

Briefs

By Order No. PSC-97-1033-PCO-WS, we allowed all parties to file briefs on the appropriate action the Commission should take in light of the Southern States decision. By Order No. PSC-97-1078-

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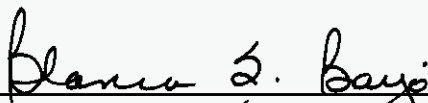
PCO-WS, issued September 15, 1997, we extended the time for filing briefs to October 7, 1997. In light of our decision discussed above, we find it appropriate to establish a new deadline for filing briefs. Accordingly, all briefs shall be filed by the parties by November 5, 1997, regarding what action the Commission should take in light of the Southern States decision. Parties are put on notice that no further extensions of time to file briefs will be granted.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Florida Water Services Corporation shall provide the notice included in this Order as Attachment A, which is incorporated herein by reference, to all affected customers by October 22, 1997. It is further

ORDERED that parties shall file briefs by November 5, 1997 consistent with Orders Nos. PSC-97-1033-PCO-WS and PSC-97-1078-PCO-WS.

By ORDER of the Florida Public Service Commission this 17th day of October, 1997.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: 1) reconsideration within 10 days pursuant to Rule 25-22.038(2), Florida Administrative Code, if issued by a Prehearing Officer; 2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or 3) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of Records and Reporting, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.

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ATTACHMENT A
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NOTICE TO CUSTOMERS OF FLORIDA WATER SERVICES CORPORATION

DOCKET NO. 920199-WS

On October 7, 1997, the Florida Public Service Commission (Commission) ordered Florida Water Services Corporation (FWSC or utility) to send a notice to all of its customers who were affected by a recent court decision in the above-referenced case. The purpose of this notice is to inform you of the action that has taken place in that case, and the potential impact on you as a customer.

In light of the recent court decision, the Commission must now decide the final resolution of this case. A brief history of this case might be helpful in order to explain the circumstances involved in the decision pending before the Commission at this time. In Docket No. 920199-WS, the Commission approved an increase in the utility's rates based on a uniform rate structure, meaning customers in all service areas of FWSC (then known as Southern States Utilities, Inc.) were billed the same water and wastewater rates. This decision on the rate structure was appealed by some customer groups. On April 6, 1995, the First District Court of Appeal reversed the Commission's decision to establish a uniform rate structure.

On October 19, 1995, the Commission issued a new order changing the rate structure to a modified stand-alone rate structure. In addition, the Commission directed the utility to refund to customers whose rates under the new rate structure were less than under the uniform rate structure. However, the Commission did not allow FWSC to impose a surcharge to those customers who paid less under the uniform rate structure than under the new rate structure. This decision was appealed by the utility on September 3, 1996. On June 17, 1997, the court issued its opinion reversing the Commission's order. Southern States Utils., Inc. v. Florida Public Service Comm'n. The Court noted in its opinion that the change in rate structure results in a rate decrease for some customers and a rate increase for others. It ruled that in order to be equitable to all concerned, any refunds to customers would have to be accompanied by surcharges to the customers who had benefitted under the uniform rate structure.

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The Commission issued an order requiring FWSC to provide information by service area of the potential refund and surcharge amounts with and without interest as of June 30, 1997. The Commission also allowed all parties in the case to file briefs giving their opinion of the appropriate action the Commission should take. The Commission identified the following potential options for the parties to argue in their briefs:

1. require refunds with interest and allow surcharges with interest;
2. do not require refunds and do not allow surcharges because the rates have been changed prospectively;
3. order refunds without interest and allow surcharges without interest;
4. allow the utility to make refunds and collect surcharges over an extended period of time to mitigate financial impacts; and
5. allow the utility to make refunds and collect surcharges over different periods of time.

It should be noted, however, that the parties may identify and argue other options not contained in this list. Further, the Commission is not bound by the options listed above, or any other options identified by parties, in making its decision.

Please be advised that if the Commission should approve refunds and surcharges with interest, according to billing records, the potential impact on you, as a customer during the period of time uniform rates were in effect (September 15, 1993 through January 23, 1996), is estimated to be a net [refund/surcharge (utility must indicate one)], including interest to August 31, 1997 (if interest is approved), of _____ for water and/or _____ for wastewater.

FWSC implemented the modified stand alone rates for all of its facilities affected by the remand decision, excluding Spring Hill, on January 23, 1996. For Spring Hill customers, the uniform rate was not discontinued until June 14, 1997. Therefore, there is a separate issue regarding a potential refund for the Spring Hill customers for this period of time. The potential refund and/or surcharge for this period of time is not reflected in the previous paragraph.

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Please be advised that the above potential impact is an estimate only and is subject to a final decision by the Commission which is scheduled to be made on December 15, 1997. There are many variables that must be considered by the Commission in making its final determination. Please understand that a decision on any one of these variables may have an impact on your potential refund and/or surcharge.

Further, the Commission has directed us to inform you that you may send your written comments and letters regarding your views on what action the Commission should take in this matter. All written submittals should be addressed to:

Director, Division of Records and Reporting
Florida Public Service Commission
Docket No. 920199-WS
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Further if you require further assistance or information you may contact the Public Service Commission's Division of Consumer Affairs at: 1-800-342-3552 or you may fax your comments to 1-800-511-0809. Any person who is hearing or speech impaired should contact the Florida Public Service Commission by using the Florida Relay Service, which can be reached at 1-800-955-8771 (TDD). This notice was prepared by the Commission.

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