

RUTLEDGE, ECENIA, UNDERWOOD, PURNELL & HOFFMAN

PROFESSIONAL ASSOCIATION  
ATTORNEYS AND COUNSELORS AT LAW

STEPHEN A. ECENIA  
KENNETH A. HOFFMAN  
THOMAS W. KONRAD  
MICHAEL G. MAIDA  
J. STEPHEN MENTON  
R. DAVID PRESCOTT  
HAROLD F. X. PURNELL  
GARY R. RUTLEDGE  
R. MICHAEL UNDERWOOD  
WILLIAM B. WILLINGHAM

POST OFFICE BOX 551, 32302-0551  
215 SOUTH MONROE STREET, SUITE 420  
TALLAHASSEE, FLORIDA 32301-1841

TELEPHONE (850) 681-6788  
TELECOPIER (850) 681-6515

December 12, 1997

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OF COUNSEL:  
CHARLES F. DUDLEY  
GOVERNMENTAL CONSULTANTS:  
PATRICK R. MALOY  
AMY J. YOUNG

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HAND DELIVERY

Mr. William Talbott  
Executive Director  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Room 315  
Gerald L. Gunter Building  
Tallahassee, Florida 32399-0850

Re: Docket No. 920199-WS

Dear Mr. Talbott:

*Julia,*  
*Unless all parties agree to*  
*the request for deferral,*  
*Staff recommends that the*  
*deferral not be granted.*  
*WJ*

This letter is sent on behalf of Florida Water Services Corporation ("Florida Water"). As you are aware, a special agenda conference in the above-referenced docket is scheduled for December 15, 1997 beginning at 1:00 p.m. The special agenda conference centers on a host of issues concerning potential refunds and surcharges arising out of the First District Court of Appeal's decision in Southern States Utilities, Inc. v. Florida Public Service Commission, 22 Fla.L. Weekly D1492, Florida 1st DCA, June 17, 1997.

The purpose of this letter is to request a short-term deferral of the December 15 Special Agenda Conference. Formal written motions for deferral or continuance of the December 15 special agenda previously were filed by Charlotte County and Florida Water on November 26, 1997 and December 5, 1997, respectively. Needless to say, this case has been among the more controversial cases in recent Commission history and promises to remain so absent settlement by the parties. From Florida Water's perspective, and this is not to say that the other parties necessarily agree with our perspective, the Commission's disposition of potential refund and surcharge issues in this proceeding presents the potential for adverse precedent likely to cause continued controversies over refunds and surcharges in other Commission rate cases in the future.

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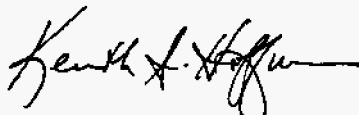
With these concerns in mind, Florida Water proposes to defer the December 15 special agenda conference so that the parties, including Commission staff, may gather before an independent mediator for purposes of discussing settlement. Florida Water would hope that such a meeting could be scheduled for the first and/or second weeks of January, 1998. If it is clear from the initial mediation meeting, that further mediation would not prove productive, the parties could so advise the Commission for rescheduling of the special agenda conference at the earliest possible date.

We have discussed this proposal with counsel for the parties of record. We are authorized to represent that Mr. Marks, Mr. McGlothlin and Mr. Forman concur with our proposal. Mr. Twomey opposes this request for deferral. Ms. Fox has some additional conditions concerning a deferral which she will provide by separate letter. Mr. Shreve was not able to take a position on a deferral at this point as I was not able to discuss the matter with him until shortly after noon today and Mr. Shreve desired further time to consider Florida Water's request.

We respectfully request expedited disposition of our deferral request. We understand that many bus loads of customers plan to appear before the Commission at the December 15 special agenda conference. Obviously, the parties need to provide notice to these customers if this deferral request is granted prior to Monday, December 15th.

Thank you for your consideration of our request.

Respectfully submitted,



Kenneth A. Hoffman  
Counsel for Florida Water Services Corporation

KAH/rl

cc: Honorable Julia L. Johnson, Chairman (by hand delivery)  
Commissioner J. Terry Deason (by hand delivery)  
Commissioner Susan F. Clark (by hand delivery)  
Commissioner Diane K. Kiesling (by hand delivery)  
Commissioner Joe A. Garcia (by hand delivery)  
Mr. Curtis Williams (by hand delivery)  
Lila Jaber, Esq. (by hand delivery)  
Michael B. Twomey, Esq. (telecopier and U. S. Mail)

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Charles J. Beck, Esq. (telecopier and U. S. Mail)

Michael S. Mullin, Esq. (by U. S. Mail)

Larry M. Haag, Esq. (by U.S. Mail)

Susan W. Fox, Esq. (by telecopier and U. S. Mail)

Joseph A. McGlothlin, Esq. (by hand delivery)

Darol H.N. Carr, Esq. (by telecopier and U. S. Mail)

Michael A. Gross, Esq. (by U. S. Mail)

Arthur Jacobs, Esq. (by telecopier and U. S. Mail)

Charles Forman, Esq. (by telecopier and U. S. Mail)

John R. Marks, III, Esq. (by hand delivery)

Brian P. Armstrong, Vice President and General Counsel, Florida Water Services Corporation (via telecopier and U.S. Mail)

Bill —

Please distribute copies  
to the Commissioners and  
Curtis Williams.

I thank you,

Mike

**MICHAEL B. TWOMEY**

ATTORNEY AT LAW  
POST OFFICE BOX 5256  
TALLAHASSEE, FLORIDA 32314-5256  
Tel. (850) 421-9530 Fax. (850) 421-8543  
e-mail: mikerwomey@prodigy.net

December 12, 1997

William Talbott  
Executive Director  
Florida Public Service Commission  
2540 Shumard Boulevard  
Tallahassee, Florida 32399-0850

Re: Docket No. 920199-WS

Dear Mr. Talbott:

Mr. Ken Hoffman, on behalf of Southern States Utilities, Inc. ("SSU"), has just delivered to you a letter asking that the Special Agenda Conference now scheduled for Monday, December 15, 1997 be deferred to some later date to allow time for possible mediation of the issues among the parties. While his letter states that I am opposed to any deferral, I want to make abundantly clear what my position is and why.<sup>1</sup>

We are now some five years into this complex and difficult case. The Commission has seen every major final order entered in this and related dockets reversed by the First District Court of Appeal. The most recent reversal took place six full months ago at which time the Court, unfortunately, reversed the Commission's decision to make SSU pay for the refunds owing to my clients and others overcharged through uniform rates. (You should recall that SSU, while attempting to disavow any financial liability on its part in making refunds, stated to both the Commission and the Court that it was not opposed to the refunds so long as the other customers, not the utility, were forced to pay for them.) The six-month delay was induced, in part, by briefing issues I considered non-germane and irrelevant and by issuing customer notices that were certainly considerate, but which, arguably, were not legally required. Legally necessary or not, these steps were taken and they, and the associated lost time, are now behind us. The Commission Staff has recently issued a recommendation for the Commission's consideration at a Special Agenda Conference that has long been scheduled for next Monday.<sup>2</sup>

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<sup>1</sup> I am speaking for all my clients, except for Sugarmill Woods Civic Association, Inc., which, for purposes of this docket only, is being represented by Ms. Susan Fox. Furthermore, I will formally respond to the pending motions for deferral or continuance filed separately by SSU and Charlotte County.

<sup>2</sup> While I certainly do not agree with every conclusion reached by your Staff, this recommendation is one of the best researched and written I have seen come out of the

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In addition to the fact that the Commission's compliance with the First District Court of Appeal's Mandate is long overdue, there are a number of reasons why continuing delay in this case is inappropriate. That SSU's offer is being made at the eleventh hour is obvious.<sup>3</sup> It is now mid-afternoon on Friday and the Agenda Conference is scheduled for next Monday. Customers from around the state have reserved bus transportation and arranged their personal schedules accordingly.<sup>4</sup> Great inconvenience would necessarily result to many people. More importantly, however, mediation at this point could not result in any binding document that would warrant additional delay. That delay would be unproductive is due, in large part, to the fact that its major proponent, SSU, doesn't "have a dog in the hunt" and has no authority to negotiate on the issues that would necessarily be at hand.

While its own money was at risk, SSU took the position that the refunds, if any, should be financed by the customers who benefitted by the uniform rates. The Court agreed. Having escaped its own liability, this two-faced, hypocritical<sup>5</sup>, chameleon of a utility is now attempting to appear as the champion of the potential surcharge customers by hiring separate private counsel to represent them, by undertaking a media blitz in their name, by providing transportation and box lunches to the Special Agenda, and by publicly asserting that the discomfort of this situation has resulted because of the Commission's mistakes. While it may have some legitimate interest in how the refunds and surcharges are administered and over what period, SSU has no legal standing to assert whether refunds should or should not be made. Having been excused by the Court, the issue is now between the customers, who SSU has so successfully pitted against one another.

Thus, SSU is not in a position to assert, negotiate, arbitrate or mediate whether refunds should or should not be made. The utility has no authority to concede that payment of a portion of the refunds is not necessary, nor can it make any binding commitment that those positioned to

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Commission in years.

<sup>3</sup> If not just a bare attempt at further delay, why is this letter coming to you less than one working day before the scheduled agenda?

... Commission giving  
and their SSU-supplied busses turned back, there is no way that all customers  
Commission's notice could be advised of a deferral. A last minute deferral now could easily lead to any number of people traveling to Tallahassee only to find the scheduled hearing canceled.

<sup>5</sup> SSU's Motion to Establish Mechanism to Hold Florida Water Harmless, filed November 11, 1997, in which the Commission increase the current rates of those same surcharge customers now so that the utility will be held harmless in the event the capband rate structure is also reversed.

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pay surcharges will pay all or any portion of what is considered due from them. Again, SSU won its way out of this predicament and will not be heard on the point. And, while I, as an attorney, may be in a position to negotiate over the rights pertaining to my clients and, therefore, be in a position of bargaining away some of the compensation due them, neither I, nor any other attorney representing customer interests in this case, is in a position of speaking for all customers' interests. That is, I cannot negotiate away the rights of SSU customers who are entitled to refunds, but who are not my clients. Neither can Ms. Fox or Mr. Jacobs. Likewise, Public Counsel, who long ago declared a conflict of interest on the uniform rate issue, is in no position to negotiate on this issue. On the flip side, no one amongst Mr. McGlothlin, Mr. Marks, Mr. Furman, or Mr. Carr is in a position to speak for all customers potentially facing surcharges.

Lastly, this case is not procedurally positioned for settlement as it might be if we were at the outset of a rate case or even at the day before an Agenda Conference at which final rates would be determined. Facing the Court's Mandate, we are well past those points. Rather, the task before the Commission is to determine the respective rights and obligations of all SSU's customers in light of the Court's Mandate. While the outcomes of the decisions may be difficult and economically painful to many, the Commission has before it a well-reasoned Staff Recommendation containing clear alternatives. The time for Commission action on this case is long over due. The Commission should address its responsibilities to the Court and the public interest without any further delay.

Sincerely,

  
 Michael B. Twomey

cc: Chairman Johnson (by telecopier)  
 Commissioners (by telecopier)  
 Mr. Curtis Williams (by telecopier)  
 Parties of record (by telecopier)