

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-97-1094-PCO-WS
ISSUED: September 22, 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 GRANTING ASSOCIATIONS' PETITION TO INTERVENE

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. Citrus County v. Southern States Utils., Inc., 656 So. 2d 1307

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(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 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, 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 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 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 (1st DCA 1997).

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, Resident Condominium, Residence Property Owners Association, Amelia Surf and Racquet Property Owners Association and Sandpiper Association (Associations) filed a Petition to Intervene and Motion to Compel Refunds. This Order addresses the Associations' Petition to Intervene.

Petition to Intervene

In their August 5, 1997 petition to intervene, the Associations allege that their substantial interests are affected in that they are utility customers and that they paid the uniform rates approved by the Commission. The Associations 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 Associations 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 Associations, 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. We 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.

Upon consideration, we believe that the unique circumstances of this case warrant allowing intervention by all substantially affected individuals at this point. The Southern States opinion should not be narrowly interpreted to only allow intervention for potential surcharge payers. Accordingly, 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, is granted. All parties shall furnish copies of future pleadings and other documents that are hereafter

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filed in this proceeding to Michael Twomey, Esquire at Route 28, Box 1264, Tallahassee, Florida 32310 and Arthur Jacobs, Esquire at Post Office Box 1110, Fernandina Beach, Florida 32035-1110.

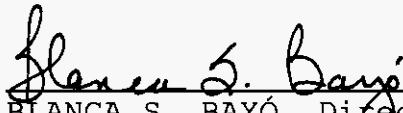
Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the August 5, 1997 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 Association Homeowners, Inc., Amelia Island Community Association, Resident Condominium, Residence Property Owners Association, Amelia Surf and Racquet Property Owners Association and Sandpiper Association is granted. It is further

ORDERED that all parties shall furnish copies of future pleadings and other documents thereafter filed to Michael Twomey, Esquire, Route 28, Post Office Box 1264, Tallahassee, Florida, 32310 and Arthur Jacobs, Esquire, Post Office Box 1110, Fernandina Beach, Florida, 32035-1110. It is further

ORDERED that this docket shall remain open.

By ORDER of the Florida Public Service Commission this 22nd day of September, 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.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

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 25-22.0376, 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.