

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-98-0749-FOF-WS  
ISSUED: May 29, 1998

The following Commissioners participated in the disposition of this matter:

JULIA L. JOHNSON, Chairman  
J. TERRY DEASON  
SUSAN F. CLARK  
JOE GARCIA  
E. LEON JACOBS, JR.

ORDER GRANTING STAY OF ORDER NO. PSC-98-0143-FOF-WS  
AND REQUIRING APPROPRIATE SECURITY

BY THE COMMISSION:

BACKGROUND

On May 11, 1992, Florida Water Services Corporation (FWSC or utility), formerly known as Southern States Utilities, Inc., filed an application to increase the rates and charges for 127 of its water and wastewater service areas. By Order No. PSC-93-0423-FOF-WS, issued March 22, 1993, we approved an increase in the utility's final rates and charges, basing the rates on a uniform rate structure. After the issuance of Order No. PSC-93-0423-FOF-WS, Citrus County and Sugarmill Woods Civic Association (Sugarmill Woods), formerly known as Cypress and Oak Villages, and the Office

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of the Public Counsel filed notices of appeal to the First District Court of Appeal.

On April 6, 1995, our decision in 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 Utilities, Inc., 656 So. 2d 1307 (Fla. 1st DCA 1995). Pursuant to the First District Court Appeal's mandate, we reconsidered our decision in Order No. PSC-93-0423-FOF-WS. On August 14, 1996, we issued Order No. PSC-96-1046-FOF-WS, requiring SSU to make refunds to customers who overpaid during the uniform rates period, without implementing a surcharge to those customers who paid less under the uniform rate structure.

The utility appealed Order No. PSC-96-1046-FOF-WS 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 Order No. PSC-96-1046-FOF-WS, by holding that the utility should be allowed to surcharge customers who underpaid if the utility is required to provide refunds to customers who overpaid under the uniform rate structure. 704 So. 2d 554 (Fla. 1st DCA 1997).

On December 15, 1997, we held a Special Agenda Conference to address the remand of the Southern States decision. At the Special Agenda Conference, we voted on all issues related to the remand. By Order No. PSC-98-0143-FOF-WS, issued January 26, 1998, we required the utility to make refunds to the Spring Hill customers for the period of time January 23, 1996 to June 14, 1997, but did not require the utility to make refunds or to surcharge other customers.

On February 24, 1998, FWSC notified the Commission that it had appealed Order No. PSC-98-0143-FOF-WS to the First District Court of Appeal as well. On that same day, FWSC filed a Motion for Stay of Order No. PSC-98-0143-FOF-WS. On February 25, 1998, the Citizens of Nassau County (Nassau County) notified the Commission of its appeal. On February 26, 1998, Senator Ginny Brown-Waite, Mr. Morty Miller, the Board of County Commissioners of Citrus County, Spring Hill Civic Association, Inc., Sugarmill Manor Inc., Cypress Village Property Owners Association, Inc., Harbour Woods Civic Association, Inc., and Hidden Mills Country Club Homeowners Association, Inc. (Associations) notified the Commission that they had joined the appeal as appellants.

STAY OF ORDER NO. PSC-98-0143-FOF-WS

By Order No. PSC-98-0143-FOF-WS, issued January 26, 1998, we required FWSC to make refunds to Spring Hill customers of the difference between the uniform rate and the modified stand-alone rate from January 23, 1996, through June 14, 1997. The modified stand-alone rates were implemented on January 23, 1996 in Docket No. 950495-WS; however, the Spring Hill facility was not included in Docket No. 950495-WS. See Order No. PSC-95-1385-FOF-WS, issued November 7, 1995. Accordingly, the Spring Hill customers remained on the uniform rate structure until June 14, 1997, when a rate change resulted from a settlement agreement between Hernando County and the utility.

As stated previously, FWSC has filed an appeal of Order No. PSC-98-0143-FOF-WS. FWSC has also filed a motion to stay the portion of the Order which required FWSC to provide refunds to the Spring Hill customers. Several parties have also appealed Order No. PSC-98-0143-FOF-WS and other parties have joined in the appeal. Those parties include Nassau County and Citrus County, governmental bodies. Nassau County filed a notice of appeal and Citrus County filed a notice of joinder.

Pursuant to Rule 9.310(b)(2), Florida Rules of Appellate Procedure, and Rule 25-22.061(3)(a), Florida Administrative Code, an appeal of an order by a governmental body operates as an automatic stay of that order. Accordingly, Nassau County's notice of appeal triggered an automatic stay of Order No. PSC-98-0143-FOF-WS. However, on April 3, 1998, the First District Court of Appeal dismissed the appeal filed by Nassau County. Thus, the dismissal has vacated the automatic stay that was triggered by Nassau County's notice of appeal.

We note that Citrus County's status as an appellant in the Associations' notice of joinder may trigger an automatic stay. Pursuant to Rule 9.310(b)(2), Florida Rules of Appellate Procedure, a "timely filing of a notice shall automatically operate as a stay pending review, except in criminal cases, when the state, any public officer in an official capacity, board, commission, or other public body seeks review". The committee notes of Rule 9.310(b)(2) provide for an automatic stay without bond as soon as a notice invoking jurisdiction is filed by a public body. The law is not clear on whether a notice of joinder triggers an automatic stay. In Premier Industries v. Mead, the court stated that an appellee failed to invoke the jurisdiction of the court by not filing a

notice of appeal, notice of cross of appeal, or notice of joinder in the appeal. 595 So. 2d 122 (1992). While the Premier Industries court seems to imply that the court's jurisdiction is invoked by a notice of joinder, there is no specific case law on the issue of whether the notice of joinder triggers the automatic stay provisions of Rule 9.310(b)(2), Florida Rules of Appellate Procedure. If the law clearly indicated that an automatic stay was triggered by Citrus County's notice of joinder, a ruling on the utility's motion for stay would be unnecessary. However, because the law is not clear, we find it appropriate to rule on the utility's motion for stay.

In its motion, FWSC states that the Commission is required to stay the Spring Hill refund requirement pending the disposition of the appeal pursuant to Rule 25-22.061(1)(a), Florida Administrative Code.

Rule 25-22.061(1)(a), Florida Administrative Code, provides that:

When the order being appealed involves the refund of moneys to customers or a decrease in rates charged to customers, the Commission shall, upon motion filed by the utility or company affected, grant a stay pending judicial proceedings. The stay shall be conditioned upon the posting of good and sufficient bond, or the posting of a corporate undertaking, and such other conditions as the Commission finds appropriate.

Rule 25-22.061(1)(a), Florida Administrative Code, is mandatory in nature in that it requires the Commission to grant a stay pending judicial proceedings when the order being appealed involves a refund to customers. Therefore, pursuant to Rule 25-22.061(1)(a), Florida Administrative Code, we are required to grant FWSC's motion upon posting of a sufficient bond or a corporate undertaking.

Based on the foregoing, we find it appropriate to grant FWSC's motion for stay pursuant to Rule 25-22.061(1)(a), Florida Administrative Code, pending the resolution of the judicial proceedings.

SECURITY

Pursuant to Rule 25-22.061(1)(a), Florida Administrative Code, a stay must be conditioned upon the posting of good and sufficient

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bond, or the posting of a corporate undertaking, and such other conditions as the Commission finds appropriate.

By Order No. PSC-97-0175-FOF-WS, issued February 14, 1997, we required FWSC to increase its appeal bond to \$13,848,225. This bond was to secure any potential refunds to all of the service areas affected by the Court's remand decision. This amount included the refund to the Spring Hill service area. On March 13, 1997, FWSC filed a rider which increased its appeal bond to \$13,848,225.

In the Southern States decision, the court reversed our earlier decision on refunds and stated that we erred by ordering SSU to provide refunds to customers who overpaid under the erroneous uniform rates without allowing SSU to surcharge customers who underpaid under these rates. Southern States Utils., Inc. v. Florida Public Service Comm'n, 704 So. 2d 554, 559 (Fla. 1st DCA 1997). Based upon this directive, we issued Order No. PSC-98-0143-FOF-WS, which required the utility to make refunds to the Spring Hill customers, but did not require the utility to make refunds or to surcharge other customers.

Since the potential refund only concerns the Spring Hill customers at this point from January 23, 1996 to June 14, 1997, we have only calculated the potential refund to the Spring Hill service area. Based on the assumption that the First District Court of Appeal will decide the pending appeal by January, 1999, we have determined the total amount of refund through this date to be \$2,705,331, including interest.

Additionally, FWSC has requested a corporate undertaking instead of a bond. A review of FWSC's financial statements by the Division of Auditing and Financial Analysis indicates that the utility cannot support a corporate undertaking in this amount. While the utility has adequate liquidity both as a trend and for the most recent 12-month period, we have found that FWSC's equity ratio has trended downward and is low for 1996. In addition, the interest coverage is weak compared to the S&P benchmark for water companies. For the reasons expressed herein, we find it appropriate to deny FWSC's request for corporate undertaking. FWSC's current appeal bond in the amount of \$13,848,225 shall be reduced to \$2,705,331. This reduction will result in a savings to FWSC in the annual renewal amount of the appeal bond.

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Based on the foregoing, it is

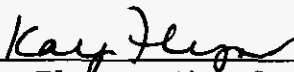
ORDERED by the Florida Public Service Commission that the motion to grant a stay of Order No. PSC-98-0143-FOF-WS, filed by Florida Water Services Corporation, is hereby granted. It is further

ORDERED that Florida Water Services Corporation shall maintain security pursuant to the provisions of this Order during the pendency of the appeal of Order No. PSC-98-0143-FOF-WS. It is further

ORDERED that Florida Water Services Corporation's bond in the amount of \$13,848,225 shall be reduced to \$2,705,331.

By ORDER of the Florida Public Service Commission this 29th Day of May, 1998.

BLANCA S. BAYÓ, Director  
Division of Records and Reporting

  
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Kay Flynn, Chief  
Bureau of Records

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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 the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) 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 and/or wastewater utility by filing a notice of appeal with the Director, Division of Records and reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.