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REPLY TO: Tallahassee

June 2, 1992

Mr. Steve Tribble, Director  
Division of Records and Reporting  
Florida Public Service Commission  
101 East Gaines Street  
Tallahassee, Florida 32399-0850

**HAND DELIVERED**

**ORIGINAL  
FILE COPY**

Re: FPSC Docket No. 920199-WS

Dear Mr. Tribble:

Enclosed for filing are an original and fifteen copies of Response of Southern States Utilities, Inc. and Deltona Utilities, Inc. to Citizens' Deficiency Letter in the above-referenced docket. Please date stamp the extra copy of this letter enclosed to indicate this filing and return the copy to me.


Thank you for your assistance in the processing of this filing, and please call if there are any questions or further requirements.

Sincerely,

  
Kenneth A. Hoffman

- ACK
- AFA
- APP
- CAF
- CMJ
- CTR  KAH:sb
- EAG  Enclosures
- LEG
- LIN  cc: Parties of Record
- OPC  Brian P. Armstrong, Esq.
- ROH
- SEC
- WAS
- OTH

RECORDED & FILED

  
DIVISION OF RECORDS & REPORTING

DOCUMENT NUMBER-DATE

05685 JUN -2 1992

FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application of Southern )  
States Utilities, Inc. and Deltona ) Docket No. 920199-WS  
Utilities, Inc. for Increased )  
Water and Wastewater Rates in ) Filed: June 2, 1992  
Citrus, Nassau, Seminole, Osceola, )  
Duval, Putnam, Charlotte, Lee, )  
Lake, Orange, Marion, Volusia, )  
Martin, Clay, Brevard, Highlands, )  
Collier, Pasco, Hernando and )  
Washington Counties. )  
\_\_\_\_\_ )

**RESPONSE OF SOUTHERN STATES UTILITIES, INC. AND  
DELTONA UTILITIES, INC. TO CITIZENS' DEFICIENCY LETTER**

Southern States Utilities, Inc. and Deltona Utilities, Inc., (hereinafter referred to collectively as the "Applicant"), respectfully submits the following Response to Citizens' Deficiency Letter dated May 21, 1992. In support thereof, Applicant states as follows:

1. On March 2, 1992, Applicant filed a letter with the Florida Public Service Commission ("Commission") seeking test year approval in this proceeding. In the letter, Applicant specifically requested authority to file testimony and exhibits in support of its Minimum Filing Requirements ("MFRs") within thirty (30) days after Commission acceptance of the MFRs.

2. The test year approval letter was issued by Chairman Beard on April 1, 1992. The approval letter states:

Your letter also requested that you be allowed to file your prepared direct testimony thirty (30) days after the approval of the minimum filing requirements. This request is also approved. [Emphasis supplied.]

3. On May 21, 1992, Office of Public Counsel ("Public Counsel") intervened in this docket. On the same date, Public Counsel submitted a letter to Chairman Beard which claims that Applicant's MFRs are deficient due to the lack of contemporaneously filed testimony.

4. Public Counsel's position is frivolous and fails on both procedural and substantive grounds.

5. From a procedural standpoint, Public Counsel's letter is untimely and improper. The test year letter was filed on March 2, 1992. Public Counsel could have intervened and raised its objection prior to the issuance of the test year approval letter on April 1, 1992. It chose not to take such action. Further, following the issuance of the test year approval letter on April 1, 1992, Public Counsel failed to bring this alleged deficiency to the Commission's attention until almost two months later.

6. Public Counsel claims that his interests are substantially affected because prefiled testimony was not filed with the MFRs. As such, Public Counsel's letter is essentially a motion for reconsideration of the Chairman's approval letter. Public Counsel refused to avail itself of the opportunity to request reconsideration within fifteen days of the issuance of the approval letter and should not now be permitted to bring an objection.

7. Public Counsel's position as stated in his letter also fails from a substantive standpoint.

8. Rule 25-30.430(3), Florida Administrative Code, grants the Chairman authority to permit prefiled testimony to be submitted following approval of MFRs:

(3) In the test year approval letter the Commission Chairman may advise whether or not prepared testimony in support of the utility's application will be required to be filed as part of the minimum filing requirements.

Under the Rule, the Chairman has the authority to decide whether prepared testimony is required to be filed as part of the MFRs or whether prepared testimony is not required to be filed as part of the MFRs. In this case, the Chairman decided that the Applicant is not required to file its prepared testimony as part of its MFRs but, instead, may file its prepared testimony within 30 days following the acceptance of the MFRs.

9. The Chairman's issuance of the approval letter is consistent with his authority under Rule 25-30.430(3). By his approval letter and in accordance with his authority pursuant to Rule 25-30.430(3), the Chairman chose not to require that testimony be filed as part of the MFRs. To the extent there is any uncertainty in the application of Rule 25-30.430(3), and Applicant maintains that the Rule is clear and not uncertain, it is well established that great deference should be given to Chairman Beard's interpretation and application of Commission rules. See, e.g., Reedy Creek Improvement District v. DER, 486 So.2d 642 (Fla. 1st DCA 1986).


10. The sheer volume of Applicant's materials alone supports the need for an additional amount of time to file testimony. In

addition, the parties to this proceeding will benefit from prefiled testimony based on accepted MFRs. This will remove the necessity of submitting revised prefiled testimony based on information which may be submitted to cure alleged deficiencies in the MFRs. Consequently, the incurrence of rate case expense associated with the task of revising testimony avoided.

11. Additionally, the Commission has recognized the reasonableness of filing testimony that is descriptive of an Applicant's corrected MFRs. See, 90 FPSC 6:359; 90 FPSC 8:107. The circumstances of this rate case call for similar treatment of prefiled testimony in this proceeding.

Based on the foregoing, the Applicant respectfully submits that Public Counsel's May 21, 1992 letter to Chairman Beard fails to establish a deficiency in Applicant's MFRS, and the Commission should reject Public Counsel's alleged deficiency.

Respectfully submitted this 2nd day of June, 1992.

  
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Attorneys for Applicants  
Southern States Utilities, Inc.  
and Deltona Utilities, Inc.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing Response to Citizen's Deficiency Letter in Docket No. 920199-WS has been served by hand delivery(\*) and/or U.S. Mail on June 2, 1992 to the following parties of record:

Matthew Feil, Esq.\*  
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Fla. Public Service Commission  
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Tallahassee, FL 32301

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Division of Water & Sewer  
Fla. Public Service Commission  
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Tallahassee, FL 32301

Harold McLean, Esq.  
Associate Public Counsel  
Office of Public Counsel  
111 West Madison Street  
Room 812  
Tallahassee, FL 32399-1400

By: \_\_\_\_\_

*Samuel Wilson*