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REPLY TO:

August 4, 1992

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

HAND DELIVERY

ORIGINAL
FILE COPY

Re: FPSC Docket No. 920199-WS

Dear Mr. Tribble:

Enclosed herewith for filing in the above-referenced docket are the original and fifteen copies of Southern States' Response to Public Counsel's Motion to Strike Testimony and Request for Oral Argument.

Please acknowledge receipt of these documents by stamping the extra copy of this letter "filed" and returning the same to me.

Thank you for your assistance with this filing.

Sincerely,

Kenneth A. Hoffman

ACK 12

AFA 3

APP _____

CFE _____

CAW KAH/rl

Enclosures

cc: ~~Brian P. Armstrong, Esq.~~

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DOCUMENT NUMBER-DATE

08613 AUG -4 1992

FPSC-RECORDS/REPORTS

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application of Southern)
States Utilities, Inc. and Deltona)
Utilities, Inc. for Increased)
Water and Wastewater Rates in)
Citrus, Nassau, Seminole, Osceola,)
Duval, Putnam, Charlotte, Lee,)
Lake, Orange, Marion, Volusia,)
Martin, Clay, Brevard, Highlands,)
Collier, Pasco, Hernando, and)
Washington Counties.)
_____)

Docket No. 920199-WS
Filed: August 4, 1992

**SOUTHERN STATES' RESPONSE TO PUBLIC
COUNSEL'S MOTION TO STRIKE TESTIMONY
AND REQUEST FOR ORAL ARGUMENT**

SOUTHERN STATES UTILITIES, INC. and DELTONA UTILITIES, INC., (hereinafter referred to collectively as "SOUTHERN STATES") by and through undersigned counsel, hereby files the following Response to the OFFICE OF PUBLIC COUNSEL'S ("Public Counsel") Motion to Strike Testimony and Request for Oral Argument:

1. Pursuant to Rule 25-30.430, Florida Administrative Code, on March 2, 1992, Southern States submitted to the Commission a written request for approval of a historic test year ended December 31, 1991 in anticipation of filing its Application for Increased Water and Wastewater Rates ("Application") for 127 water and wastewater systems. Southern States' test year letter also requested authority to file prepared testimony and exhibits in support of the minimum filing requirements ("MFRs") within thirty (30) days after Commission acceptance of the MFRs -- not within thirty (30) days after the officially established filing date.

2. Southern States' request for authority to file prepared testimony and exhibits in support of the MFRs within thirty (30)

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FPSC-RECORDS/REPORTING

days after Commission acceptance of its MFRs was primarily based on the fact that the Commission, Staff and all affected parties would benefit if prepared testimony and exhibits were based on complete, accepted MFRs, including responses to alleged deficiencies.¹

3. Rule 25-30.430(3), Florida Administrative Code, grants the Chairman of the Commission the authority to advise whether or not prepared testimony in support of a utility's application will be required to be filed as part of the MFRs.

4. On April 1, 1992, the Chairman issued the test year approval letter in this docket. In accordance with the discretion granted to the Chairman under Rule 25-30.430(3), the Chairman granted Southern States' request to file prepared testimony and exhibits in support of the MFRs within thirty (30) days after Commission acceptance of the MFRs:

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.

See Test Year Approval Letter dated April 1, 1992, a copy of which

¹In other words, a contemporaneous filing of prepared testimony and exhibits with the MFRs would have required the filing of the testimony and exhibits prior to submission of responses to alleged deficiencies. Unlike other utilities in this state, the eight month suspension period for water and wastewater utilities does not begin when the MFRs are filed. Rather, water and wastewater utilities must await receipt of deficiencies and then submit sufficient responses to such deficiencies prior to the initiation of the suspension period. In light of this fact, it would be illogical to file testimony and exhibits initially with the MFRs when information contained therein is still subject to supplementation and amendment per Staff deficiencies.

is attached hereto as Exhibit "A".

5. On May 11, 1992, Southern States filed its Application and MFRs.

6. On June 17, 1992, Southern States filed additional information in response to alleged deficiencies in its MFRs.

7. By letter dated June 22, 1992, a copy of which is attached hereto as Exhibit "B", Charles H. Hill, Director of the Commission's Division of Water and Wastewater, advised Southern States that the MFRs had been met and that the official date of filing for the Application was established as June 17, 1992.

8. Consistent with the purpose and intent of Southern States' request and the Chairman's approval of a thirty (30) day period to file prepared testimony and exhibits following Commission acceptance of the MFRs, the Commission issued a Case Assignment and Scheduling Record ("CASR") requiring Southern States to file prepared direct testimony and exhibits by July 22, 1992 (thirty (30) days after the date of Mr. Hill's letter confirming acceptance of the MFRs). The July 22, 1992 deadline was subsequently reaffirmed in the Order Establishing Procedure (Order No. PSC-92-0638-PCO-WS) issued on July 10, 1992.

9. On July 24, 1992, Public Counsel filed its Motion to Strike Testimony and Request for Oral Argument. Public Counsel's motion is not timely from a procedural standpoint and lacks substantive merit.

10. From a procedural standpoint, Public Counsel has waived any right to challenge the Chairman's decision to grant Southern

Southern States' request to file prepared direct testimony and exhibits in support of its MFRs within thirty (30) days after Commission acceptance of the MFRs. The Chairman issued his decision pursuant to the test year approval letter dated April 1, 1992. Public Counsel had actual or constructive knowledge of the Chairman's decision on or about April 1, 1992. Nonetheless, Public Counsel waited approximately 115 days to file a motion with the Commission challenging the Chairman's decision.² Moreover, the Chairman's decision is reflected in the Order Establishing Procedure issued by Commissioner Easley on July 10, 1992. That Order specifically states that reconsideration of any matter determined therein must be filed within ten (10) days. Public Counsel did in fact timely file a Petition for Reconsideration of Order PSC-92-0638-PCO-WS (Order Establishing Procedure); however, the Petition for Reconsideration does not in any way raise a challenge to the determination that Southern States' prepared direct testimony and exhibits shall be filed by July 22, 1992. Public Counsel's Motion to Strike Testimony was filed fourteen (14) days after issuance of the Order Establishing Procedure, and hence, was not timely filed. Accordingly, Public Counsel has waived any right to move to strike Southern States' prepared direct testimony and exhibits on the ground that such testimony and exhibits were required to be filed simultaneously with the MFRs.

11. Public Counsel's motion also lacks substantive merit.

²Public Counsel's contention that it was somehow denied a point of entry to timely intervene and file a motion challenging the Chairman's decision is spurious.

Public Counsel alleges that under subsection (3)(a) of Rule 25-30.430, prepared testimony must be filed simultaneously with MFRs for cases anticipated to require a formal hearing. Subsection (3)(a) of the Rule is not consistent with section (3) of the Rule which states:

(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.

12. The inconsistency between section (3) and subsection (3)(a) of Rule 25-30.430 is being addressed in the comprehensive water and wastewater rulemaking proceedings in Docket No. 911082-WS. In the meantime, it is up to the Chairman to interpret and apply Rule 25-30.430. This is precisely what the Chairman did in granting Southern States' request. The Chairman's discretion and authority under Rule 25-30.430, even assuming a timely challenge by Public Counsel, should not be disturbed.³

13. Public Counsel alternatively alleges that Southern States' prepared direct testimony and exhibits are "more than thirty (30) days late." See paragraph 7 of Public Counsel's Motion to Strike Testimony. Public Counsel is apparently taking the alternative position that the Chairman's decision required Southern States to file its prepared direct testimony and exhibits by July

³Had Public Counsel timely challenged the Chairman's decision, acceptance of Public Counsel's interpretation of Rule 25-30.430(3) and (3)(a) would not provide a basis to reverse the Chairman's decision since the substance of Southern States' test year letter request amounted to a request for a waiver of any requirement (if the Rule were so construed) that prepared direct testimony and exhibits be filed simultaneously with the MFRs.

17, 1992, i.e., within thirty (30) days of the officially established filing date. There is no merit to this position. Southern States did not request authority to file prepared direct testimony and exhibits thirty (30) days after the officially established filing date. The Chairman's test year approval letter clearly states that Southern States was to file its prepared testimony and exhibits within thirty (30) days after acceptance of the MFRs which occurred on June 22, 1992. Public Counsel's position is inconsistent with the CASR and Order Establishing Procedure and would serve to undermine one of the purposes of Southern States' request which was to be granted 30 days to prepare and file its direct testimony and exhibits based on accepted MFRs.⁴

14. Public Counsel's conclusory allegation that it has been unduly prejudiced lacks factual support and is without merit. Even assuming that Southern States was required to file its prepared direct testimony and exhibits by July 17, 1992, which it was not, the additional five days works no meaningful prejudice on Public Counsel and provides no basis to strike Southern States' direct testimony and exhibits. See State Dept. of Environmental


⁴In other words, adoption of Public Counsel's position in this case would have left Southern States with only 25 days to prepare and file its direct testimony and exhibits. Theoretically, adopting Public Counsel's position could conceivably eliminate the authority of the Chairman to grant requests similar to the one made by Southern States in this case. This is because the Director of the Division of Water and Wastewater has no required deadline for providing written notice of Commission acceptance of MFRs following submission of deficiency responses (he could respond more than 30 days after such submission). However, once notice of acceptance of the MFRs is given, the official filing date is established as of the prior date on which deficiency responses are submitted.

Regulation v. Puckett, 577 So.2d 988 (Fla. 1st DCA 1991) (administrative agency did not waive right to file response to petition for fees and costs filed in hearing before the Division of Administrative Hearings by filing response four days after 20-day time limit for filing response expired, absent showing that other party suffered any prejudice from delay).

15. Public Counsel's request for oral argument is procedurally and substantively deficient. Rule 25-22.058(1), Florida Administrative Code, requires a request for oral argument to be set forth on a separate document (accompanying the pleading upon which the argument is requested). The request for oral argument also must "state which particularity why oral argument would aid the Commission in comprehending and evaluating the issues raised by exceptions or responses." Public Counsel's request for oral argument fails to meet the above-stated rule requirements.

WHEREFORE, Southern States respectfully requests the Commission to enter an order denying Public Counsel's Motion to Strike Testimony and Request for Oral Argument.

Respectfully submitted,


KENNETH A. HOFFMAN, ESQUIRE
LAURA L. WILSON, ESQUIRE
Messer, Vickers, Caparello,
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P. O. Box 1876
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(904) 222-0720

and

BRIAN P. ARMSTRONG, ESQUIRE
Southern States Utilities, Inc.
1000 Color Place
Apopka, Florida 32703
(407) 880-0058

Attorneys for Applicant Southern
States Utilities, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Southern States' Response to Public Counsel's Motion to Strike Testimony and Request for Oral Argument was furnished by United States Mail, this 4th day of August, 1992, to the following:

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

Matthew Feil, Esq.
Catherine Bedell, Esq.
Florida Public Service Commission
Division of Legal Services
101 East Gaines Street
Room 226
Tallahassee, Florida 32399

By: 
KENNETH A. HOFFMAN, ESQ.



STATE OF FLORIDA

Public Service Commission

THOMAS M. BEARD
CHAIRMAN

April 1, 1992

101 EAST GAINES STREET
TALLAHASSEE, FL 32399-0851
(904) 488-6943

Mr. Kenneth A. Hoffman
Messer, Vickers, Caparello, Madsen,
Lewis, Goldman and Metz, P.A.
P.O. Box 1876
Tallahassee, FL 32302

Re: Docket No. 920199-WS, Application of Southern States Utilities, Inc., Deltona Utilities, Inc. and United Florida Utilities Corporation for Increased Water and Wastewater Rates in Citrus, Nassau, Seminole, Osceola, Duval, Putnam, Charlotte, Lee, Lake, Orange, Marion, Volusia, Martin, Clay, Brevard, Highlands, Collier, Pasco, Hernando and Washington Counties - Test Year Approval

Dear Mr. Hoffman:

We have received your letter dated March 2, 1992, requesting approval to use an historic test year ended December 31, 1991, for a rate case covering 127 systems in the above named counties. Your test year request as outlined above is hereby approved.

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.

Lastly, your letter requested that the full Commission be assigned to consider this rate request because of the complexity of the issues involved. Because of the current and expected caseload of the Commission, I must deny your request; however, subsection 350.01(6), Florida Statutes, provides that you may file a petition requesting that the full Commission be assigned to this proceeding. If you file such a petition, the full Commission will dispose of the request.

For administrative purposes only, Docket No. 920199-WS has been assigned to the forthcoming case. Your petition will not be deemed filed until we have received the petition, revised tariff sheets, the minimum filing requirements and the filing fee. To minimize any regulatory lag that may occur, we request that you file the above no later than July 1, 1992. Because of the difficulty in scheduling hearing dates it is not anticipated that an extension of this filing date will be granted.

EXHIBIT "A"

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Under the file and suspend law, the time period for processing the request will begin when all of the required data is filed and accepted as complete. If not complete, the official date of filing will be the filing date of the corrections to the deficiencies, if they are accepted. The utility is instructed to file all information it wishes the Commission to consider when arriving at a decision on its rate case application with its original filing. Because of the time limitations contained in section 367.081, Florida Statutes, and the lengthy auditing and investigation required, information not filed with the original application may not be considered and information filed after completion of the staff's investigation will not be considered. Lastly, the utility should be prepared to justify all increased operation and maintenance expenses, particularly those in excess of customer growth and inflation since the Utility's most recent rate case.

Sincerely,



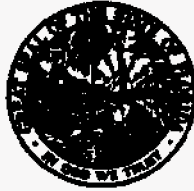
Thomas M. Beard
Chairman

TMB:waw

cc: Commissioners
Mr. Swafford
Mr. Talbott
Nanette Fisher
Division of Records and Reporting
Division of Legal Services
Division of Water and Wastewater

State of Florida

Commissioners:
THOMAS M. BEARD, CHAIRMAN
BETTY EASLEY
J. TERRY DEASON
SUSAN F. CLARK
LUIS J. LAUREDO



DIVISION OF WATER &
WASTEWATER
CHARLES HILL
DIRECTOR
(904) 488-8482

Public Service Commission

RECEIVED

JUN 23 1992

June 22, 1992

Mr. Kenneth A. Hoffman
Messer, Vickers, Caparello, Madsen, Lewis & Metz
P.O. Box 1876
Tallahassee, Florida 32302-1876

RE: Docket No. 920199-WS, Application of Southern States Utilities, Inc. and
Deltona Utilities, Inc. for an increased in water and wastewater rates.

Dear Mr. Hoffman:

Please be advised that the minimum filing requirements have now been met and that
the official date of filing for the above case is hereby established as June 17, 1992.

Sincerely,

A handwritten signature in black ink, appearing to read "Charles H. Hill".

Charles H. Hill
Director

cc: Division of Records and Reporting
Division of Legal Services (Bedell, Feil, Summerlin)
Division of Water and Wastewater (Willis, Crouch, Messer, Merchant)

EXHIBIT "B"