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April 6, 1993

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

Re: Docket No. 920199-WS

Dear Mr. Tribble:

Enclosed for filing in the above-captioned proceeding on behalf of the Citizens of the State of Florida are the original and 15 copies of the Citizens' Petition for Reconsideration.

Please indicate the time and date of receipt on the enclosed duplicate of this letter and return it to our office.

Sincerely,

Harold McLean  
Associate Public Counsel

- ACK \_\_\_\_\_
- AFA 1 \_\_\_\_\_
- APP \_\_\_\_\_
- CAF \_\_\_\_\_
- CMU \_\_\_\_\_
- CTR \_\_\_\_\_
- EAG \_\_\_\_\_
- LEG 1 \_\_\_\_\_
- LIN 4 \_\_\_\_\_
- OPC \_\_\_\_\_
- RCH \_\_\_\_\_
- SEC 1 \_\_\_\_\_
- WAS \_\_\_\_\_
- OTH \_\_\_\_\_

Enclosure

REC'D - BUREAU OF RECORDS  
APR 6 1993

DOCUMENT NUMBER-DATE  
03739 APR-6 83  
F730-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

*In Re:* Application for rate increase in ) Docket No. 920199-WS  
Brevard, Charlotte/Lee, Citrus, Clay, )  
Duval, Highlands, Lake, Marion, ) Filed: April 6, 1993  
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) )

CITIZENS' PETITION FOR RECONSIDERATION

The Citizens of the State of Florida, by and through JACK SHREVE, Public Counsel, pursuant to the provisions of commission Rule 25-22.060, Fla. Admin. Code, move the Florida Public Service Commission to reconsider two provisions of order No. PSC-93-0423-FOF-WS (the order), to wit, that relating to the gain on sale of St. Augustine Shores, and that relating to acquisition adjustment.

Gain On Sale

The commission's order at page 59 states:

"Arguably, if the sale of this system had been accompanied by a loss, any suggestion that the loss be absorbed by the remaining SSU customers would be met with great opposition". However, the rationale for sharing a loss is basically the same as the rationale for sharing a gain. Since SSU's remaining

customers never subsidized the investment in the SAS (St. Augustine Shores) system, they are no more entitled to share in the gain from that sale than they would be required to absorb a loss from it."

The commission ignored several facts in the record, not the least of which is that customers do in fact "absorb a loss from it."

Exhibit 24: FPSC order No. 17168, concerning Southern States utilities, Inc. request for an increase in rates in Lake County. This order deals with exactly the same issue as addressed in the instant case: how should the gain on the sale of system be treated? In the instant order, the commission finds that if a separate system were sold and if that system were not subsidized by other systems, then the remaining customers of the unsold systems should not share in the gain on sale any more than they should absorb a loss were there a loss. However, in order No. 17168, where the exactly same circumstances existed, the commission ordered the customers of the unsold systems to absorb the loss on the sale of a system. Specifically, in order No. 17168 the commission ordered:

Subsequent to the test year, Southern States sold the Skyline Hills water system to the Town of Lady Lake. We believe the *gain or loss on the sale of a system should be recognized in setting rates for the remaining systems.* Based on the net investment in plant by the utility, closing costs, and the purchase price, the sale of the Skyline Hills system resulted in a loss of \$5,643. This loss should be amortized over a three-year period resulting in an annual expense of \$1,881. [P. 9,

italics added.]

By failing to treat the gain on sale consistent with the loss on sale in two essentially identical situations, the commission has unfairly erred in its treatment of the gain on sale associated with St. Augustine Shores. The commission's decision did not address Exhibit 24. More importantly, the commission failed to make any distinction between the two cases that would justify the differing treatments. Citizens are once again caught in an illogical and costly quagmire: if it's a loss, customers pay, but if it's a gain, customers pay. Heads I win; tails you loose! Had the commission considered the evidence before it, it would have determined that the gain on sale of the St. Augustine Shore system should be shared with SSU's remaining customer base.

At page 37 of the instant order, the commission had little reservation in tagging the customers for the loss on the abandonment of utility property. Specifically, the commission endorsed the abandonment of the Salt Springs water system and recognized a loss of \$11,143 over five years. (The distinction here, of course, is customers have the unenviable opportunity to *pay*.) The commission notes that no adjustment is necessary to revenue requirements because the calculation and amortization of the loss produces the same revenue requirement as was included in the test year investment and depreciation. While the mechanics of the calculation may be sound, its driving rationale is not. The order calls upon customers to make the utility whole for losses: the customers bear the risk of ownership, albeit not the title. But the benefit of gain, normally attendant to the bearing of risk, is noticeably absent from the commission order,

despite evidence having been adduced on the subject.

commissioner Clark recognized the dilemma during the hearings:

COMMISSIONER CLARK: And an abandonment, why shouldn't the abandonment simply be allocated to the shareholders and not the ratepayers? What is the difference between a condemnation where you lose money or an abandonment where you have property taken from you or where you have to abandon----

[Witness Response]

COMMISSIONER CLARK: But that's the same in the condemnation. It was used and useful, it was a prudent investment when you made it, but it was condemned and you lost money.

I mean, I guess I'm struggling with a rationale for treating it differently because in the past we have allowed abandonments to be recovered if it was a prudent investment to begin with. And it seem to me if I can't distinguish between that and a loss, why should I distinguish between a loss and a gain. [Tr. pp. 236-37.]

The Citizens who pay more when abandonment is recognized and who pay more when gain on sale is not recognized, struggle even more than Commissioner Clark did. The order is internally inconsistent: the rationale between abandonment and gain on sale distills to whether customers or the utility gains.

To add illogical insult to illogical injury, the commission orders SSU customers to

provide for the utility's expenses related to its condemnation-resisting efforts. Exhibit 140, which was not addressed in the commission's order, shows that during the test year the utility included approximately \$21,000 of expenses associated with an attempted condemnation of Deltona Lakes by Volusia County. The commission's order is silent as to the disposition of these expenses. Logic dictates that where the customers have no stake in the outcome, they ought not foot the bill for the utility's ensuring that the outcome is as expensive for the condemning authority as possible.

Negative Acquisition Adjustment/Deltona High Cost Debt

With respect to the negative acquisition adjustment, the order at page 47 states:

OPC did not sponsor or solicit evidence on the record tending to show that any specific negative acquisition adjustment(s) should be made. It is our policy to disallow positive or negative acquisition adjustments unless extraordinary circumstances exist. No such circumstances were shown. Therefore, based on the foregoing we have made no acquisition adjustment to rate base.

With respect to the Deltona high cost debt, the order at page 49 states:

The utility argues that if the issue is not the cost of debt but the purchase price, then the adjustment would be more appropriately addressed in the acquisition adjustment issue and not in the cost of debt issue. We agree with the utility.

Even a casual reading shows that there was considerable evidence solicited by Public Counsel and introduced by Public Counsel which demonstrates the need for a negative acquisition adjustment and which demonstrates the presence of extraordinary

circumstances\* all of which was ignored. In addition, the commission failed to consider the implications of the Deltona 15.50% debt at the time of the Deltona acquisition by Topeka in considering whether a negative acquisition adjustment is appropriate.

Evidence which contradicts the false commission statement quoted from page 47 of the order:

- ▶ Exhibits 74, 78, 80, 83, 84, 80 each of which dealt with the subject of the Deltona purchase by Topeka and the subject of acquisition adjustments.
- ▶ Transcript Pages 934 through 965, pages 977 through 989, and pages 1015 through 1025, dealt specifically with the issue of the Deltona purchase, the subject of a negative acquisition adjustment, and the Deltona high cost debt.

The utility argued and the commission agreed that the Deltona high cost debt "would be more appropriately addressed in the acquisition adjustment issue". Appropriate, yes: present NO. The order fails to even consider the subject of the Deltona high cost debt in conjunction with a negative acquisition adjustment. The commission should have imputed a negative acquisition adjustment associated with the Deltona high cost debt. Certainly, the utility took the high cost of this debt into consideration when negotiating the purchase price of the Deltona systems. To do otherwise, would have been imprudent. Mr. Vierima, the utility's witness on this subject, was uninformed on whether this high cost debt was taken into consideration when negotiating the purchase price of the Deltona systems. He could only say that Topeka was


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\* a conveniently elusive standard at best.

aware of the high cost debt when it purchased Deltona. [Tr. 1024-25.] The commission could easily determine the amount of a negative acquisition adjustment as it relates to this high cost debt by determining the interest savings the utility would have realized, had it not purchased a system with such a high cost of debt--this would be the discount built into the purchase price of the Deltona systems. Finally, no one can deny that Topeka's acquisition of a system that had in place debt obligations with an anachronistic, excessive interest rate, which could not be refinanced, is an extraordinary circumstance. (Even under the vagaries of that standard)

**WHEREFORE**, evidence having been presented upon the enumerated issues and the commission having ignored the same, the Citizens of the State of Florida, move the Florida Public Service Commission to reconsider order No. PSC-93-0423-FOF-WS and enter an amended order reflecting a rational treatment of gain on sale and recognizing a negative acquisition adjustment in the Deltona purchase.

Respectfully submitted,

  
Harold McLean  
Associate Public Counsel

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Tallahassee, FL 32399-1400

Attorney for the Citizens  
of the State of Florida



**CERTIFICATE OF SERVICE  
DOCKET NO. 920199-WS**

I HEREBY CERTIFY that a correct copy of the foregoing has been furnished by U.S. Mail or hand-delivery to the following parties on this 6th day of April, 1993.

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