

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Joint Petition of)
Citrus County, Hernando County,)
Cypress and Oaks Villages)
Association, Spring Hill)
Civic Association and Ginny)
Brown-Waite, Florida State)
Senator and SSU ratepayer,)
for Full Commission hearing to)
set system-by-system, stand-)
alone rates for water and)
wastewater systems operated by)
SOUTHERN STATES UTILITIES, INC.)
in Brevard, Charlotte, Lee,)
Citrus, Clay, Duval, Highlands,)
Lake, Marion, Martin, Nassau,)
Orange, Osceola, Pasco, Putnam,)
Seminole, Volusia, and)
Washington Counties; Collier)
County by MARCO SHORES)
UTILITIES (Deltona); Hernando)
County by SPRING HILL UTILITIES)
(Deltona); and Volusia County)
by DELTONA LAKES UTILITIES)
(Deltona))

DOCKET NO. 930647-WS
FILED: 8-16-93

FILED
THE ONLY

JOINT RESPONSE TO SOUTHERN STATES' MOTION TO DISMISS
AND REQUEST FOR INVESTIGATION

The Board of County Commissioners of Citrus County ("Citrus
County"), The Board of County Commissioners of Hernando County
("Hernando County"), The Cypress and Oaks Villages Association
("COVA"), The Spring Hill Civic Association and Ginny Brown-
Waite, Florida State Senator and Southern States Utilities, Inc.
ratepayer, (collectively, "Joint Petitioners"), by and through
their undersigned counsel, submit their Joint Response to

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FILED RECORDS SECTION

political constituents of the Board of County Commissioners of Citrus County, and the County Commissioners have a substantial interest in seeing that their constituents are charged fair and reasonable rates for their water and wastewater service. The Board of County Commissioners of Citrus County is represented by Larry M. Haag, County Attorney, Citrus County, 107 N. Park Avenue, Suite 8, Inverness, FL 34450 and Michael B. Twomey, Assistant Attorney General, Department of Legal Affairs, PL-01, The Capitol, Tallahassee, FL 32399-1050.1

B. COVA is a homeowners' association consisting of some 1,163 individuals who are customers of Sugarmill Woods/Southern States. The members of COVA and the other customers of Sugarmill Woods/Southern States would pay lower "stand alone" water and wastewater rates than under the uniform statewide rate structure recently approved in Docket No. 920199-WS. Specifically, COVA has calculated that its members will be overcharged by approximately \$300 per year per customer, or over \$500,000 annually in total. The members of COVA have a substantial interest in not being charged the higher uniform statewide rates, which require them to subsidize the operations of other Southern States utilities and cause them to lose the value of the substantial connection fees they paid to initially receive service. COVA takes the position that uniform statewide rates and the associated subsidies are not only inherently unfair and unreasonable, but illegal as well. COVA is represented by Susan

W. Fox, MACFARLANE FERGUSON, 111 Madison Street/Suite 2300, Post Office Box 1531, Tampa, FL 33601-1531.

C. Hernando County is one the political subdivisions mandated by Article VIII, Section 1(a), Florida Constitution. Its physical location is described in Section 7.27, Florida Statutes and its mailing address is 202 East Jefferson Street, Brooksville, FL 34601. Hernando County has a bulk wastewater treatment agreement with Southern States and is a customer with a substantial interest in the rates the Commission approves for Southern States. Pursuant to the bulk wastewater treatment agreement, the Hernando County Water and Sewer District currently transmits approximately 300,000 gallons per day of wastewater from over 2,100 residential and 30 commercial customers to Southern States' Spring Hill Wastewater Treatment Plant. The Hernando County Water and Sewer District was told by Southern States representatives that it could expect a \$1.93 per thousand gallonage charge with no base facility charge for the meters and interconnections between the two systems, which are owned and maintained by Hernando County. Under the uniform statewide rate structure recently approved by a two-Commissioner panel, Hernando County will be charged \$4.09 per thousand gallons and a base facility charge of approximately \$32,000 annually. The total increase to Hernando County due to the adoption of the uniform statewide rates is in excess of \$268,500. Hernando County is also the situs of the residential community of Spring Hill, whose

residents have some 22,688 water and 4,846 wastewater accounts with the Spring Hill constituent utility of Southern States. The customers of Spring Hill utility are political constituents of the Board of County Commissioners of Hernando County, and the County Commissioners have a substantial interest in seeing that their constituents are charged fair and reasonable rates for their water and sewer service. The Board of County Commissioners of Hernando County is represented in this case by Michael B. Twomey, Assistant Attorney General, Department of Legal Affairs, PL-01, The Capitol, Tallahassee, FL 32399-1050.

D. The Spring Hill Civic Association is a homeowners association representing the interests of over 22,000 homeowners who are customers of the Spring Hill utility subsidiary of Southern States. The members of the Spring Hill Civic Association and the other customers of Spring Hill/Southern States would pay lower "stand alone" water and sewer rates than under the uniform statewide rate structure recently approved in Docket No. 920199-WS. Specifically, Spring Hill has calculated that its members will be overcharged by approximately \$196 per year per customer, or in excess of \$1,800,000 annually. The members of the Spring Hill Civic Association have a substantial interest in not being charged the higher uniform statewide rates, which require them to subsidize the operations of other Southern States utilities and cause them to lose the value of the substantial connection fees they paid to initially receive

service. The Spring Hill Civic Association takes the position that uniform statewide rates and the associated subsidies are not only inherently unfair and unreasonable, but illegal as well. The Spring Hill Civic Association is represented in this case by Michael B. Twomey, Assistant Attorney General, Department of Legal Affairs, PL-01, The Capitol, Tallahassee, FL 32399-1050.

E. Senator Ginny Brown-Wait is a member of the Florida Senate and represents, among other areas, Hernando County, the members of the Spring Hill Civic Association and the other customers of Spring Hill/Southern States. Senator Brown-Waite is also a customer of Spring Hill/Southern States. Senator Brown-Waite has a substantial interest in seeing that her constituents, who are customers of Southern States, are not charged unfair, unreasonable and unlawful rates as a result of the imposition of a uniform statewide rate structure. Furthermore, she has a personal substantial interest in seeing that she is not required to pay unfair, unreasonable and unlawful utility rates as the result of the imposition of uniform statewide rates. Senator Brown-Waite is represented in this case by Michael B. Twomey, Assistant Attorney General, Department of Legal Affairs, PL-01, The Capitol, Tallahassee, FL 32399-1050.

2. The Joint Petitioners allege that there are no facts supporting an assertion that the existence of uniform statewide rates will reduce rate shock, rate case expense, or reduce water consumption and, thereby, save water resources. Furthermore,

of return on the utility investment used and useful in providing service to the customers of each system.

Response to Motion to Dismiss

4. In its Motion to Dismiss, Southern States argues that the Joint Petition is nothing more than a thinly-disguised request for further reconsideration of Order No. PSC-93-0423-FOF-WS. It argues that the necessity for administrative finality requires that this case be closed absent some changed conditions or other circumstances not present in the proceedings which led to the order or, in this case, the result complained of.

5. Southern States' argument recognizes that no administrative decision of the Commission is set in concrete and that changed circumstances, even over a short period of time, can justify modification of a prior Commission order. In the instant case, Joint Petitioners sought to give the full Commission an opportunity to rectify the actions of a two-Commissioner panel (only one of whom now remains) by asking that the Commission provide full and complete notice on the complained of issue of uniform statewide rates, hold an evidentiary hearing on the factual and legal issues and arrive at a decision representing the consensus of the entire Commission. Joint Petitioners reasoned that such action would give them and the other aggrieved customers of Southern States the assurance that they had received a full and fair hearing on the merits after full and complete notice of the issues to be considered.

uniform statewide rates. Such an investigation should include determining whether the Commission staff made a decision to recommend to the assigned panel the adoption of uniform statewide rates sometime prior the conclusion of the administrative hearing in the case and, if so, how early in the proceeding such a decision was made. Such an investigation should determine whether the Commission's water and wastewater staff intentionally delayed recommending the adoption of uniform statewide rates so as to limit the ability of Joint Petitioners and other substantially affected persons to present evidence in opposition to the uniform rate concept or otherwise challenge it. Such an investigation should have the purpose of determining whether the timing of the Commission staff's decision to recommend the adoption of uniform rates affected the quality of notice given to utility customers both by the Commission and the utility, and whether it affected the scope and substance of testimony presented by the parties. Lastly, such an investigation should determine whether there was any cooperation or contacts between the Commission staff and Southern States regarding the utility's decision not to file for uniform rates and the timing of the Commission staff in recommending their adoption. In support of their request for an investigation, the Joint Petitioners state:

A. The Commission staff's desire for the existence of large utilities to acquire and operate smaller, marginal water

and wastewater systems has long been known by persons knowledgeable in the industry.

B. As a precursor to this case, Commission staff conducted a staff management audit of Southern States and recommended numerous changes the implementation of which would aid the ability of Southern States to acquire and operate smaller systems. When Southern States balked at implementing many of the audit recommendations, it was virtually coerced by Commission staff to make the desired changes. The recommended changes required by Commission staff were expensive.

C. In its prior rate case, Southern States requested the implementation and approval of uniform statewide rates and filed supporting testimony. Furthermore, Commission staff endorsed the proposition of uniform rates in that proceeding. Whether adequately noticed or not, the issue of uniform rates was known because of the utility's rate filing and the supporting testimony of its witnesses.

D. The prior rate case was dismissed by the Commission (Commissioners Gunter and Easley) because of deficiencies in the filings and with the observation by Commissioner Gunter that the concept of uniform rates had been explained but not justified. Southern States retained a new law firm and prepared a new filing, which did not ask for uniform rates or raise the subject in the testimony of its witnesses. Commissioner Gunter died after the first case was dismissed and the case was reassigned to

H. During the conduct of the hearing, the Commission failed to adequately address a Southern States' claim for meal expense reimbursement which indicated that two staff persons had been in attendance and received a meal with a utility representative. No sworn testimony was taken to indicate whether the staff had, in fact, attended the meals and, if so, what the purpose of the meetings was.

I. Only after the evidentiary hearings were concluded and the post-hearing briefs were submitted did the Commission staff issue its ringing endorsement for uniform statewide rates.

J. A published memorandum by Chuck Hill, Director of the Commission's Water and Wastewater Division has evidenced a reprehensible disregard for professional responsibility, fairness and collegial action on the part of his (Commission's) staff. While admittedly not demonstrative of unfair play in this case, the Hill memorandum shows not only a tolerance for crafting testimony to achieve his (Hill's) ends, but an insistence upon it.

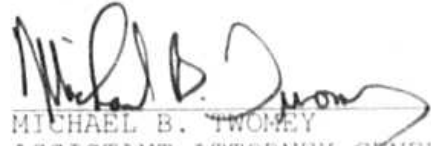
9. In view of the above, the Joint Petitioners believe the Commission staff actions surrounding the two Southern States cases and the adoption of the uniform statewide rate structure are sufficiently questionable to warrant the Commission starting an investigation to determine whether Commission staff acted

intentionally to deny any substantially affected person his or her procedural due process to notice and a fair and complete hearing.

10. Such a hearing should include the right of all parties to conduct full and complete discovery necessary to determining whether staff's conduct was acceptable.

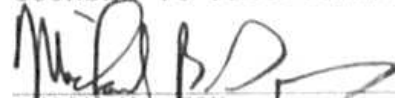
WHEREFORE, Joint Petitioners respectfully request that the Florida Public Service Commission deny Southern States' Motion to Dismiss, Proceed to hearing on the Joint Petition and Initiate an Investigation of the activities of its staff in connection with its recommendation of the adoption of uniform statewide rates.

Respectfully submitted,



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