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REPLY TO: Tallahassee

October 19, 1993

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

HAND DELIVERY

Re: Docket No. 920199-WS

Dear Mr. Tribble:

Enclosed for filing in the above-referenced docket are the following documents:

1. Original and fifteen copies of Southern States' Motion to Vacate Automatic Stay; and

2. A disk in Word Perfect 5.1 containing a copy of the document entitled "SSU.Vacate."

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
Kenneth A. Hoffman

ACK
AFA 1
APP _____
CAF _____
CMU _____
CTR _____
EAG _____
LEG 1
LIN 4
OPC _____
RCH _____
WAS 1
DTH _____

KAH/rl
Enclosures

RECEIVED & FILED

M. Smiley
REC

DOCUMENT NUMBER-DATE

11187 OCT 1993

FPSC-RECORDS/REPORTING

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: October 19, 1993

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**SOUTHERN STATES'
MOTION TO VACATE AUTOMATIC STAY**

Southern States Utilities, Inc. ("Southern States"), by and through its undersigned attorneys, and pursuant to Rule 25-22.061(3), Florida Administrative Code, respectfully moves the Commission to vacate the automatic stay of Order No. PSC-93-0423-FOF-WS (the "Final Order") imposed as a result of the filing by Citrus County and Cypress and Oak Villages Association ("COVA") of a Notice of Appeal of the Final Order on October 8, 1993, as amended on October 11, 1993, with the State of Florida, First District Court of Appeal. In support of its request, Southern States shows:

1. Southern States filed an application for a rate increase (the "Application") with the Florida Public Service Commission (the "Commission") which was accepted by the Commission on June 17, 1992. The Commission assigned Docket No. 920199-WS to the proceeding.

2. Citrus County and COVA intervened and were active parties in Docket No. 920199-WS.

3. The Commission issued the Final Order on March 22, 1993. The Final Order granted Southern States a revenue increase of

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approximately \$6.7 million and established rates which would give Southern States the opportunity to obtain such revenue.

4. No notice of appeal was filed by any party to Docket No. 920199-WS within thirty (30) days of the issuance of the Final Order. Instead, Southern States, Office of Public Counsel, Citrus County and COVA filed motions for reconsideration of the Final Order with the Commission.

5. The Commission considered the motions for reconsideration filed by the parties as well as other post-hearing pleadings filed by Citrus County and COVA, and another issue raised on the Commission's own motion, at several agenda conferences held between the date the Order was issued and September 28, 1993. The Commission denied all motions for reconsideration and other post-hearing pleadings but voted, on its own motion, to adjust Southern States' interim rate refund liability on September 28, 1993.

6. No order disposing of the motions for reconsideration or other post-hearing pleadings and motions has been issued to date.

7. Despite the absence of an order disposing of their motions for reconsideration, Citrus County and COVA filed a Notice of Appeal in this matter on October 8, 1993. Since the notice filed on October 8, 1993 named only Southern States as an appellee, the notice subsequently was amended on October 11, 1993 to include the Commission as an appellee.

8. Pursuant to Rule 25-22.061(3), the Commission must vacate the automatic stay arising out of Citrus County's appeal upon the filing of this motion and the posting of sufficient security, if

any. The Rule states as follows:

When a public body or public official appeals an order involving an increase in a utility's or company's rates which appeal operates as an automatic stay, the Commission shall vacate the stay upon motion by the utility or company and the posting of good and sufficient bond or corporate undertaking. [Emphasis added.]

9. Rule 25-22.061(1)(b) identifies the factors to be considered by the Commission when determining the amount of a bond or corporate undertaking which Southern States may file with the Commission to vacate the automatic stay resulting from the filing of the Notice of Appeal (as amended) by Citrus County. These factors include "[t]erms that will discourage appeals when there is little possibility of success...."

10. As demonstrated below, Citrus County is not likely to prevail on appeal for the following reasons: (i) the original and amended Notices of Appeal were not filed within the period required under the Florida Rules of Appellate Procedure and (ii) regulatory authorities such as the Commission historically have been given wide latitude by the courts to design rates which are just, reasonable and fair to utility customers. The Commission's Final Order and the subsequent Staff recommendation addressing motions for reconsideration and other post-hearing pleadings filed in this case provide a comprehensive analysis of the benefits to the customers of the uniform rate structure approved by the Commission. The Final Order and Staff recommendation also appropriately reject the arguments of Citrus County and COVA concerning an alleged lack of notice of the rate structure issue and the legality of uniform

statewide rates. Given these facts, the likelihood of Citrus County and COVA convincing an appellate court that the Commission's Final Order is unconstitutional, in violation of Chapter 367, Florida Statutes, or otherwise unlawful is remote.


11. As indicated in Appendix I, attached hereto, Southern States is charging customers served by 10 of the 11 systems located in Citrus County lower water and/or wastewater rates as a result of the implementation of the rates authorized in the Final Order. In addition, Citrus County itself is a customer served by two of Southern States' water systems for which rates have been lowered. Although Citrus County could argue that some customers located in Citrus County will be paying more than the stand alone rate rejected by the Commission, Citrus County also must acknowledge the benefits demonstrated by the lower rates shown in Appendix I to be charged to the majority of the Citrus County residents served by Southern States as well as Citrus County taxpayers who must pay the utility bills incurred by Citrus county itself.

12. Implementation of the rates authorized in the Final Order is in the public interest. Citrus County repeatedly has confirmed to Southern States and Staff members that the rate structure issue is a revenue neutral issue. Given this fact, the implementation of the rates authorized in the Commission's Final Order, with all the benefits such rates bestow on customers, is in the public interest and particularly the interest of Citrus County customers and taxpayers.

13. In light of (i) the remote likelihood of success of Citrus County's appeal, (ii) the benefits (including lower rates) bestowed on the majority of the customers served by Southern States in Citrus County (as well as Citrus County taxpayers), (iii) the fact that implementation of the rates authorized in the Final Order is in the public interest, and (iv) the fact that even if successful on appeal, no refund liability would exist since the determination of rate structure would be revenue neutral, Southern States requests that the automatic stay be vacated without the necessity of Southern States posting a corporate undertaking or bond. In the alternative, Southern States requests that the automatic stay be vacated upon filing by Southern States of a corporate undertaking (in the form attached hereto as Appendix II) or bond in an amount to be determined by the Commission.

WHEREFORE, Southern States respectfully requests that the Commission issue an order vacating the automatic stay imposed by the filing of the Notice of Appeal, as amended, by Citrus County and COVA, without the posting of a bond or corporate undertaking by Southern States or, in the alternative, vacate the automatic stay upon filing by Southern States of a corporate undertaking (in the form attached hereto) or a bond in an amount to be determined by the Commission.

Respectfully submitted,


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and

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(407) 880-0058

Attorneys for Southern States
Utilities, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Southern States' Motion to Vacate Automatic Stay was furnished by U. S. Mail and/or Telecopier (*), this 19th day of October, 1993, to the following:

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Florida Public Service
Commission
Div. of Legal Services, Rm. 212
101 East Gaines Street
Tallahassee, FL 32399-0850

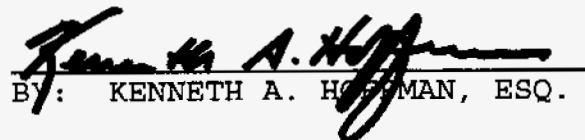
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