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August 15, 1995

**ORIGINAL
FILE COPY**

Ms. Blanca S. Bayo, Director
Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Betty Easley Conference Center
Room 110
Tallahassee, Florida 32399-0850

HAND DELIVERY

Re: Docket No. 950495-WS

Dear Ms. Bayo:

Enclosed herewith for filing in the above-referenced docket on behalf of Southern States Utilities, Inc. ("SSU) are the following documents:

1. Original and fifteen copies of SSU's Response to Petition of Spring Hill Civic Association, Inc. for Leave to Intervene; and
2. A disk in Word Perfect 6.0 containing a copy of the document entitled "Rate.2answer."

Please acknowledge receipt of these documents by stamping the

ACK ~~extra~~ copy of this letter "filed" and returning the same to me.

AFA Underdiver

Thank you for your assistance with this filing.

APP _____

CAF _____

Sincerely,

CMU _____



Kenneth A. Hoffman

CTR _____

EAG _____

LEG 1 KAH/rl

LIN 5 ~~cc:~~ All Parties of Record

OPC _____

RCH _____

SEC 1

WAS Wallas

QTH _____

RECEIVED & FILED

FPSC-BUREAU OF RECORDS

DOCUMENT NUMBER-DATE

07818 AUG 15 95

FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application by Southern)
States Utilities, Inc. for rate)
increase and increase in service)
availability charges for Orange-)
Osceola Utilities, Inc. in)
Osceola County, and in Bradford,)
Brevard, Charlotte, Citrus, Clay,)
Collier, Duval, Hernando, High-)
lands, Hillsborough, Lake, Lee,)
Marion, Martin, Nassau, Orange,)
Osceola, Pasco, Polk, Putnam,)
Seminole, St. Johns, St. Lucie)
Volusia and Washington Counties.)
_____)

Docket No. 950495-WS

Filed: August 15, 1995

SSU'S RESPONSE TO PETITION
OF SPRING HILL CIVIC ASSOCIATION, INC.
FOR LEAVE TO INTERVENE

Southern States Utilities, Inc. ("SSU"), by and through its undersigned counsel, hereby files its Response to the Petition of Spring Hill Civic Association, Inc. ("SHCA") and states:

1. SSU does not object to the SHCA's Petition for Leave to Intervene to the extent the Petition is filed on behalf of members of SHCA who are customers of SSU. SSU objects to the Petition to the extent the Association purports to represent customers of SSU who are not members of SHCA. SHCA lacks standing to represent customers of SSU who are not members of SHCA.

2. SSU objects to the irrelevant and unsupported allegations set forth in paragraphs 4 and 5 of the Petition concerning SHCA's alleged right to refunds arising out of a different rate case in a different docket to which SHCA was not a party.

3. SHCA seeks to assert a right to refunds based on the First District Court of Appeal's decision reversing the Commission's approval of SSU's statewide uniform rates in Docket

DOCUMENT NUMBER-DATE

07818 AUG 15 95

FPSC-RECORDS/REPORTING

No. 920199-WS.¹ SHCA was not a party to Docket No. 920199-WS nor the appeal of the Commission's Final Order in Docket No. 920199-WS. Accordingly, SHCA is without standing to pursue a refund in the Docket No. 920199-WS proceedings. SHCA's attempt to collaterally pursue a refund of revenues granted to SSU in Docket No. 920199-WS in the instant docket is without legal precedent and must be rejected. The right to pursue relief in Docket No. 920199-WS is solely and exclusively reserved to parties to Docket No. 920199-WS and the appellate proceedings arising therefrom.

4. Three separate requests for refunds previously have been placed before the Commission and/or the First District Court of Appeal by Citrus County, a party to Docket No. 920199-WS. As discussed more fully below, none of these prior requests were granted.

a. On October 26, 1993, Citrus County filed a motion requesting, inter alia, "... that this Commission require Southern States to refund to all customers, so charged, the difference between the interim rates and the uniform rates, with interest at an appropriate and reasonable rate." The Commission denied Citrus County's motion in Order No. PSC-93-1788-FOF-WS issued December 14, 1993 (Order Vacating Automatic Stay). Citrus County subsequently filed a motion with the First District Court of Appeal on January 25, 1994 requesting review of the Order Vacating Automatic Stay. Citrus County's motion for review of the Order Vacating Automatic

¹Citrus County v. Southern States Utilities, Inc., 20 Fla.L.Weekly D838 (Fla. 1st DCA April 6, 1995), as amended on rehearing, 20 Fla.L.Weekly D1518 (June 27, 1995).

Stay was denied by the First District Court of Appeal by Order dated March 2, 1994.

b. On November 10, 1993, prior to the issuance of the Order Vacating Automatic Stay, Citrus County filed an Emergency Motion to Enforce Automatic Stay and Suggestion for Contempt ("Emergency Motion") with the First District Court of Appeal. In its Emergency Motion, at 10, Citrus County requested the Court to order "... Southern States to immediately begin charging the interim rates it was charging prior to the imposition of the Automatic Stay and to issue the appropriate refunds resulting from the uniform rates being improperly implemented." The First District Court of Appeal denied Citrus County's Emergency Motion by Order dated December 7, 1993.

c. Despite having twice failed to secure requested refunds, Citrus County again asked the First District Court of Appeal to issue an opinion directing the Commission "... to order customer refunds to those individuals who have been unlawfully overcharged ..." under the uniform rate structure. See Citrus County's Response to Motions for Rehearing, etc. and Suggestion for Motion to Show Cause Why Monetary and Other Sanctions Should Not Be Imposed, at 12-13, First DCA Case Nos. 93-3324 and 93-4089. The Court refused to grant the relief requested by Citrus County, and, instead, issued an amended opinion on rehearing correcting two erroneous factual statements set forth in the original opinion.

5. The denials of Citrus County's requests for refunds in the Docket No. 920199-WS proceedings, including the appeal,

represent the law of the case and are binding on the Commission in any further proceedings in Docket No. 920199-WS.

6. There is no legal authority which would support a requirement that SSU provide refunds to any specific customer in Docket No. 920199-WS. The granting of refunds would, inter alia, constitute an unconstitutional taking of SSU's property. SHCA's allegation that SSU is obligated to make refunds pursuant to the Order Vacating the Automatic Stay is ludicrous. Nowhere in the Order Vacating Automatic Stay did the Commission determine that if the uniform rate structure ordered for SSU was reversed, SSU would be required to refund revenues collected under that rate structure. Indeed, such a determination would have been unlawful. Further, at the proceedings resulting in the lifting of the automatic stay, SSU's undersigned counsel made SSU's position clear to the Commission, specifically, "... that on a rate structure appeal, where [SSU] is implementing the rates authorized by the Commission, in an appeal which would be strictly revenue neutral, ... the Company does not place itself at risk."² SHCA's assertions at the August 1, 1995 Agenda Conference and, again, in their Petition for Leave to Intervene, that Company counsel made admissions to the contrary are false.


7. The increases in revenue requirements ordered by the Commission in Docket No. 920199-WS were not disturbed on appeal. Absent a decision by the appellate court decreasing the total

²See Transcript from November 23, 1993 Agenda Conference in Docket No. 920199-WS, at 53.

revenue requirements ordered by the Commission, no legal authority or basis exists to require SSU to provide a refund to a party to the Docket No. 920199-WS proceeding.

WHEREFORE, apart from the inaccurate and unsupported allegations in SHCA's Petition which have been addressed herein, SSU does not object to the intervention of SHCA on behalf of its members in this docket. SSU does object to SHCA's Petition to the extent it purports to seek intervention for customers of SSU who are not members of SHCA.

Respectfully submitted,



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and

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing SSU's Response to Petition of Spring Hill Civic Association, Inc. for Leave to Intervene was furnished by hand delivery(*) and/or U. S. Mail to the following this 15th day of August, 1995:

Lila Jaber, Esq.*
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KENNETH A. HOFFMAN, ESQ.

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