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**ORIGINAL
FILE COPY**

November 2, 1995

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 original and fifteen copies of SSU's Response to Notice of Appearance and Nassau County Customers' Motion to Adopt, Motion to Cap Rates, and Motion For Reconsideration.


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
AFA 3
APP _____
CAF _____ KAH/rl
CMU _____ cc: All Parties of Record
CTR _____ Trib.3
EAG _____
LEB 1
LH 5 RECEIVED & FILED
JFC _____
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SEC _____
WTH _____

RECEIVED & FILED

DIVISION OF RECORDS

DOCUMENT NUMBER-DATE
10827 NOV-2 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 Osceola)
Utilities, Inc., in Osceola)
County, and in Bradford, Brevard,)
Charlotte, Citrus, Clay, Collier,)
Duval, Highlands, Lake, Lee,)
Marion Martin, Nassau, Orange,)
Osceola, Pasco, Putnam, Seminole,)
St. Johns, St. Lucie, Volusia,)
and Washington Counties.)
_____)

Docket No. 950495-WS

Filed: November 2, 1995

SSU'S RESPONSE TO NOTICE OF APPEARANCE AND NASSAU
COUNTY CUSTOMERS' MOTION TO ADOPT, MOTION TO CAP RATES,
AND MOTION FOR RECONSIDERATION

SOUTHERN STATES UTILITIES, INC., ("SSU") by and through its undersigned counsel, and pursuant to Rule 25-22.037, Florida Administrative Code, hereby files this Response to the Notice of Appearance filed by the firm of Jacobs & Peters, purportedly on behalf of SSU customers in Nassau County (hereinafter "Nassau customers"), and to the Nassau customers' Motion to Adopt, Motion to Cap Rates, and Motion for Reconsideration served October 20, 1995. In support of this Response, SSU states as follows:

1. The Notice of Appearance filed by the Jacobs & Peters law firm does not and cannot take the place of a petition to intervene. The purpose of a Notice of Appearance is to advise the court (Commission in this case) and the parties of a filing party's legal representative. Nassau customers have not yet been granted party status, and party status can only be granted through a petition to intervene. Rule 25-22.039, Florida Administrative Code. While this may seem a mere formality since SSU's customers in Nassau

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FPSC-RECORDS/REPORTING

County would have a substantially affected interest in the outcome of this proceeding, the Notice of Appearance and pleadings mentioned hereinabove do not provide a clear indication of whom the Jacobs & Peters law firm represents. Does the firm represent the Nassau County government or some unit thereof on behalf of all of SSU's Nassau County customers?¹ Does the firm represent all of SSU's Nassau County customers as the Notice of Appearance seems to indicate?² Does the firm represent only a group of SSU customers in Nassau County? Accordingly, even if the Commission considered the Jacobs & Peters firm's Notice of Appearance a petition to intervene, the petition should be rejected as insufficient as a matter of law. The composition of the party seeking participation in this proceeding cannot be determined from the aforementioned filings.

2. Since the Nassau customers cannot be granted party status based on the Notice of Appearance and pleadings filed, the Commission should not consider the Nassau customers' Motion to Adopt, Motion to Cap Rates, and Motion for Reconsideration at this time. Said motions should only be considered, if at all, after Nassau customers are granted party status. This notwithstanding, if the Commission considers said motions, SSU responds to said motions as follows:

¹ If this is the case, the County is required by Section 120.52(12), Florida Statutes, to pass a resolution authorizing same prior to being eligible for party status.

² If this is the firm's claim, SSU questions what authority the firm has for so asserting.

a. Intervenors take the case as they find it. Rule 25-22.039, Florida Administrative Code. An intervenor is therefore not permitted to renew motions made by other parties which have already been ruled on absent the intervenor's stating a legally sufficient basis for reconsideration in a timely motion for reconsideration.

b. Nassau customers' Motion to Adopt the First Motion to Dismiss filed by the Office of Public Counsel ("OPC") should be denied.³ Nassau customers' Motion to Adopt OPC's First Motion to Dismiss should be denied for the same reasons the underlying OPC Motion was denied. The Commission denied OPC's First Motion to Dismiss by vote taken October 10, 1995. An order reflecting that vote has not been issued at the time of this Response. This notwithstanding, Nassau customers' Motion to Adopt does not meet the standard for granting reconsideration and should be denied on that basis. Diamond Cab Co. of Miami v. King, 146 So.2d 889 (Fla. 1962). SSU also incorporates herein by reference the response SSU filed to OPC's First Motion to Dismiss.

c. Nassau customers' Motion to Adopt OPC's Second, Third, and Fourth Motions to Dismiss ("OPC Motions") should be denied for the same reasons the underlying OPC Motions should be denied. SSU incorporates herein by reference the responses SSU filed to said OPC Motions.


³ The apparent purpose in Nassau customers' adopting various prior motions made by OPC is for Nassau customers to argue said Motions as though said Motions were Nassau customers' own.

d. Nassau customers' Motion to Cap Rates should be denied since it does not meet the standard for granting reconsideration. Diamond Cab Co. of Miami v. King, supra. By vote taken October 6, 1995, as reflected in Order No. PSC-95-1327-FOF-WS, issued November 1, 1995, the Commission denied OPC's Motion to Cap Rates identical to the Motion to Cap Rates made here by Nassau customers. SSU also incorporates herein by reference the response SSU filed to said OPC Motion.

e. Nassau customers' Motion for Reconsideration of Order No. PSC-95-1208-PCO-WS, issued September 19, 1995, (the "Order Establishing Procedure") should be denied and stricken as an untimely motion for reconsideration. Motions for reconsideration to the Order Establishing Procedure were due to be filed within 10 days of issuance.

WHEREFORE, in consideration of the foregoing, Southern States Utilities, Inc. requests that the Commission reject the aforementioned Notice of Appearance, and deny the Nassau County customers' Motion to Adopt, Motion to Cap Rates, and Motion for Reconsideration for the reasons herein stated.

Respectfully submitted,


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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing SSU's Response to Notice of Appearance and Nassau County Customers' Motion to Adopt, Motion to Cap Rates, and Motion for Reconsideration was furnished by U.S. Mail to the following this 2nd day of November, 1995:

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