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: November 15, 1995

MOTION TO STRIKE
AFFIDAVITS OF FORREST L. LUDSEN AND SCOTT VIERMA
AND PORTIONS OF MOTION FOR RECONSIDERATION

Sugarmill Woods Civic Association, Inc., hereby moves to strike portions of the Motion For Reconsideration discussing the financial impact of the refund order on SSU, and to strike the Affidavits of Forrest L. Ludsen and Scott Vierma. As grounds for this motion, Sugarmill Woods Civic Association, Inc., states that the financial impact of the refund order on SSU is an inappropriate basis for reconsideration, is irrelevant to the refund issue, and is presented only for inappropriate considerations of sympathy, passion, and prejudice.

The basic criteria for admission of evidence in Florida is relevance. However, even relevant evidence is inadmissible if its probative value is substantially outweighed by the danger of unfair prejudice, or confusion of issues. Florida Statutes, Section 90.403.

This case presents a pure legal question as to the rights and labilities of the parties who paid or received money under an order

that was overturned on appeal. In addition, it involved the circumstances surrounding lifting of the automatic stay. The financial impact on SSU is simply not a consideration in resolving these rights and liabilities.

Moreover, the discussion of financial impact addresses matters which are inherent in the refund order, not something that was overlooked or misapprehended by the Commission. The effort to turn the rehearing process into evidentiary hearing on financial impact should be rejected. If financial impact were a proper consideration, SSU should have raised it and presented its affidavits before the hearing on remand. Although newly discovered evidence is a basis for rehearing, the "evidence" presented here does not meet that standard. See Roberto v. Allstate Insurance Co., 457 So.2d 1148 (Fla. 3rd DCA 1984). (Rehearing to allow presentation of newly discovered evidence is permissible if new evidence is discovered after the final hearing, is likely to change the result, could not have been discovered prior to the hearing in the exercise of due diligence, and is material to the issues.) To allow these affidavits on rehearing would invite almost any disappointed litigant to present their financial circumstances as a basis for setting aside a utility rate order. Here, Appellants could bring forth many senior citizens whose lifestyle and credit ratings have been adversely affected by the loss of $600, on the average, pending this appeal.

Statements regarding a party's wealth, or lack thereof, are routinely stricken as irrelevant to legal issues. Abruzzo v.

Haller, 603 So.2d 1338 (Fla. 1st DCA 1992). Similarly, excuses for a party's conduct that do not affect liability should also be stricken. City of Winter Haven v. Tuttle White Constructors, Inc., 370 So.2d 829 (Fla. 2nd DCA 1979). (Defalcation of parties' accountant, resulting in non-payment, was not relevant, and thus was not a proper basis for rehearing.)

For these reasons, the affidavits attached to SSU's Motion For Reconsideration, and the portions of its motion that discuss the irrelevant issues should be stricken.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the above and foregoing has been furnished via U.S. Mail, postage prepaid, this 15 day of November, 1995 to the following persons:

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