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November 27, 1995

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HAND DELIVERY

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

Re: Docket No. 920199-WS

Dear Ms. Bayo:

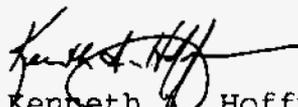
Enclosed herewith for filing in the above-referenced docket on behalf of Southern States Utilities, Inc. ("SSU") are the following documents:

1. Original and fifteen copies of SSU's Response in Opposition to Sugarmill Woods' Motion to Strike Affidavits and Portions of Motion for Reconsideration;
2. Original and fifteen copies of Motion of Southern States Utilities, Inc. for Leave to File Reply and Proposed Reply; and
3. A disk in Word Perfect 6.0 containing a copy of the documents entitled "Giga.OPP" and "Giga.Motion."

Please acknowledge receipt of these documents by stamping the extra copy of this letter "filed" and returning the same to me.

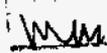
Thank you for your assistance with this filing.

Sincerely,


Kenneth A. Hoffman

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KAH/rl
cc: All Parties of Record
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cc: All Parties of Record
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EPSC-BUREAU OF RECORDS

Motion for Leave
DOCUMENT NUMBER-DATE
11847 NOV 27 88

Response
motion in Oppos
DOCUMENT NUMBER-DATE
11846 NOV 27 88

FPSC-RECORDS/REPORTING

ORIGINAL
FILE COPY

In re: Application of)
Southern States Utilities,)
Inc. and Deltona Utilities,)
Inc. for Increased Water and)
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 27, 1995

**SSU'S RESPONSE IN OPPOSITION TO
SUGARMILL WOODS' MOTION TO STRIKE
AFFIDAVITS AND PORTIONS OF MOTION FOR RECONSIDERATION**

Southern States Utilities, Inc. ("SSU"), by and through its undersigned counsel, and pursuant to Rule 25-22.037(2)(b), Florida Administrative Code, hereby files its Response in Opposition to the Motion to Strike Affidavits of Forrest L. Ludsen and Scott Vierima and Portions of Motion for Reconsideration filed by Sugarmill Woods Civic Association, Inc. ("Sugarmill Woods"), and states as follows:

1. On November 3, 1995, SSU filed its Motion for Reconsideration of Order No. PSC-95-1292-FOF-WS (the "Refund Order"). In support of its Motion for Reconsideration, SSU attached the Affidavits of its Vice President of Finance and Administration, Forrest L. Ludsen¹, and its Vice President and Chief Financial Officer, Scott Vierima.² SSU requested that these Affidavits be incorporated into and made a part of the record in

¹See Exhibit B to SSU's Motion for Reconsideration of Order No. PSC-95-1292-FOF-WS.

²See Exhibit C to SSU's Motion for Reconsideration of Order No. PSC-95-1292-FOF-WS.

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FPSC-RECORDS/REPORTING

this proceeding.³

2. Mr. Vierima's Affidavit demonstrates the numerous adverse financial effects of the Refund Order -- an obligation for SSU to incur the cost of over \$8 million in refunds without compensating recoveries -- on SSU. Mr. Ludsen's Affidavit sets forth SSU's proposed remedy on reconsideration which would entail the implementation of rate credits to disburse the refunds and rate surcharges to recover the costs thereof. Mr. Ludsen's Affidavit also confirms the revenue deficiency and increased refund liability caused by the Commission's sua sponte adjustment of base facilities charges for SSU's residential customers served primarily through 1-inch meters to the 5/8 inch x 3/4 inch meter base facilities charge. Finally, Mr. Ludsen's Affidavit addresses why it is inappropriate to include accrued and ongoing interest charges as part of any refund liability which may be ultimately ordered by the Commission on reconsideration.

3. Responses to SSU's Motion for Reconsideration were filed by the Office of Public Counsel, Citrus County and Sugarmill Woods. Sugarmill Woods also filed a Motion to Strike the Affidavits of Messrs. Ludsen and Vierima and portions of SSU's Motion for Reconsideration. Sugarmill Woods' Motion to Strike fails to identify which portions of SSU's Motion for Reconsideration it wishes to have stricken.⁴

³See SSU's Motion for Reconsideration of Order No. PSC-95-1292-FOF-WS, at 19-20 (fn. 16).

⁴The Motion to Strike states only that "the portions of its (SSU's) motion that discuss the irrelevant issues should be

4. Sugarmill Woods' Motion to Strike is based on two contentions. First, Sugarmill Woods contends that the financial impact of the Refund Order on SSU is somehow irrelevant to the refund liability imposed on SSU pursuant to the Refund Order. Second, Sugarmill Woods alleges that the evidence offered by SSU in the Affidavits of Messrs. Ludsen and Vierima is not newly discovered evidence and, therefore, inappropriate for reconsideration. Sugarmill Woods offers no relevant case law in support of its positions. For the reasons stated below, the Motion to Strike must be denied.

5. The remand of the Citrus County decision⁵ and the Refund Order issued in response to the remand raise the questions of whether the Commission possesses the statutory authority to require a utility to make refunds to certain customer groups upon reversal by a court of a Commission ordered rate structure; and, if so, whether it is lawful to order such refunds without also permitting the utility a means to concomitantly recover the expenses associated with such refunds so that the utility will have the opportunity to recover the final revenue requirements ordered by the Commission and affirmed by the Court. Apart from the significant precedential impact that resolution of these issues is likely to have on all utilities regulated by the Commission, the Refund Order itself will unquestionably have devastating financial

stricken." Sugarmill Woods' Motion to Strike, at 3.

⁵Citrus County v. Southern States Utilities, Inc., 656 So.2d 1307 (Fla. 1st DCA 1995), review denied, _____ So.2d _____ (Fla. October 27, 1995).

impacts on SSU as emphasized by Mr. Vierima. Further, the Commission cannot lawfully discharge its responsibilities on remand by ignoring or failing to give balanced consideration to the known financial "end results" of the Refund Order.⁶ For these reasons, the Commission should openly accept any and all evidence concerning the financial impacts of the Refund Order so that it will have all relevant information before it in making a decision of this magnitude on reconsideration.

6. Sugarmill Woods would have the Commission believe that the evidence of adverse financial impacts and other financial information presented in the Affidavits are not relevant to the refund liability imposed on SSU pursuant to the Refund Order. Clearly, from a factual standpoint, Sugarmill Woods is wrong as the Affidavits speak directly to the adverse financial impacts of the Refund Order on SSU and support SSU's refund/recoupment proposal which would provide a legal and equitable resolution of this case for SSU and all of its affected customers. Moreover, as a matter of law, under the facts of this case, the Commission is clearly within its authority to consider the Affidavits on reconsideration and admit them into the record.

7. As SSU stated in its Motion for Reconsideration:

As a general matter, reopening the record to incorporate, or to afford parties an opportunity to elicit, additional or new evidence relevant to a determination previously made by an agency is a lawful response to a court reversal and remand. Air

⁶See SSU's Motion for Reconsideration of Order No. PSC-95-1292-FOF-WS, at 6, 43-44.

Products and Chemicals v. FERC, 650 F.2d 687 at 699-700 (D.C. Cir. 1981); Public Service Commission of the State of New York v. FPC, 287 F.2d 143 at 146 (D.C. Cir. 1960). Such action is particularly appropriate where, as here, the court decision is based on a new rule of law not advanced by the parties in the appeal or considered by the agency in the first instance. McCormick Machinery v. Johnson & Sons, 523 So.2d 651, 656 (Fla. 1st DCA 1988).⁷

The rationale and holding of the above cited cases must guide the Commission in this case. This case was remanded to the Commission by the Court based on the Court's articulation of a new rule of law not considered by the Commission in the first instance or briefed by the parties on appeal. That new rule of law (requiring that there be a finding that a utility's facilities and land are functionally related, *i.e.*, one system, as a precondition to charging uniform rates) resulted in the reversal of the Commission imposed uniform rate structure which directly led to the Commission's Refund Order on remand. The Citrus County decision did not require that the Commission prescribe refunds. That decision was left to the discretion of the Commission. Under McCormick Machinery, it is entirely appropriate and permissible for the Commission to admit relevant evidence on remand in order to effect a sound, just and legally permissible disposition of the case. Such evidence is found in the Affidavits of Messrs. Ludsen and Vierima.

⁷See SSU's Motion for Reconsideration of Order No. PSC-95-1292-FOF-WS, at 13-14.

8. Sugarmill Woods' attempt to close the Commission's eyes to this relevant evidence must be rejected. Sugarmill Woods argues that the facts set forth in the Affidavits "are inherent in the Refund Order, not something that was overlooked or misapprehended by the Commission."⁸ Again, Sugarmill Woods is wrong. The Refund Order fails to address financial impacts and that is precisely why SSU has brought these facts to the Commission's attention in its Motion for Reconsideration.⁹ Sugarmill Woods also cites the Commission to two decisions which stand for the proposition that certain newly discovered evidence may form the basis for a new trial¹⁰ and another decision where the Court affirmed the trial court's striking of a phrase in a civil complaint filed by an employee against an employer for alleged unpaid wages which described the employer as having "amass[ed] a substantial personal net worth."¹¹ These irrelevant decisions lend nothing to Sugarmill Woods' claim that the Affidavits should be stricken.

WHEREFORE, for the foregoing reasons, SSU respectfully requests that Sugarmill Woods' Motion to Strike Affidavits of Forrest L. Ludsen and Scott Vierima and Portions of Motion for

⁸Sugarmill Woods' Motion to Strike, at 2.

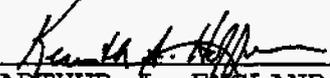
⁹See SSU's Motion for Reconsideration of Order No. PSC-95-1292-FOF-WS, at 5, 9-11.

¹⁰See Sugarmill Woods' Motion to Strike, at 2-3, citing Roberto v. Allstate Insurance Co., 457 So.2d 1148 (Fla. 3d DCA 1984) and City of Winter Haven v. Tuttle White Constructors, Inc., 370 So.2d 829 (Fla. 2d DCA 1979).

¹¹See Sugarmill Woods' Motion to Strike, at 2-3, citing Abruzzo v. Haller, 603 So.2d 1338 (Fla. 1st DCA 1992).

Reconsideration be denied.

Respectfully submitted,


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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing SSU's Response in Opposition to Sugarmill Woods' Motion to Strike Affidavits and Portions of Motions for Reconsideration was furnished by U. S. Mail to the following this 27th day of November, 1995:

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Giga.opp