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April 29, 1996

GOVERNMENTAL CONSULTANTS:
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**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. are the following documents:

1. Original and fifteen copies of SSU's Motion for Attorneys' Fees and Costs; and
2. A disk in Word Perfect 6.0 containing a copy of the document entitled "Fees".

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,

William B. Willingham

Kenneth A. Hoffman

ACK

AFA 3

APP _____

CAF _____

CMU _____

CTR KAH/rl

EAG _____

LEG 1 cc: All Parties of Record
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OPC _____

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FPSC-RECORDS AND REPORTING

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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, Highlands, Lake, Lee, Marion, Martin, Nassau, Orange, Osceola, Pasco, Polk, Putnam, Seminole, St. Johns, St. Lucie, Volusia and Washington Counties.

ORIGINAL FILE COPY

Docket No. 950495-WS

Filed: April 29, 1996

SSU'S MOTION FOR ATTORNEYS' FEES AND COSTS

Southern States Utilities, Inc. ("SSU"), by and through its undersigned counsel, and pursuant to Section 120.57(1)(b)(5), Florida Statutes (1995), hereby requests the Commission to enter an Order requiring the Office of Public Counsel ("OPC") and, as specified below, other Intervenors, to pay the reasonable expenses incurred by SSU, including a reasonable attorneys' fee, arising from three motions identified below which have been filed in this proceeding. In support of its Motion, SSU states as follows:

I. BACKGROUND AND AUTHORITY

1. This Motion is filed pursuant to Section 120.57(1)(b)5., Florida Statutes (1995), which provides as follows:

Pleadings, motions, or other papers filed in the proceeding must be signed by a party, the party's attorney, or the party's qualified representative. The signature of a party, a party's attorney, or a party's qualified representative constitutes a certificate that he or she has read the pleading, motion, or other paper and that, to the best of his or her knowledge, information, and belief, formed after reasonable inquiry, it is not interposed for any improper purposes, such as to harass

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or to cause unnecessary delay or for frivolous purpose or needless increase in the cost of litigation. If a pleading, motion, or other paper is signed in violation of these requirements, a hearing officer, upon motion or the officer's own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay the other party or parties the amount of reasonable expenses incurred because of the filing of the pleading, motion, or other paper, including a reasonable attorney's fee. (Emphasis supplied).

2. This Motion is directed to the following motions filed in this proceeding.

a. OPC's Second Motion to Cap Interim Rates, filed on December 4, 1995, and denied by Order No. PSC-96-0125-FOF-WS issued January 25, 1996;

b. OPC's Motion to Dismiss SSU's Supplemental Petition for Interim Revenue Relief, filed on December 4, 1995, and denied by Order No. PSC-96-0125-FOF-WS issued January 25, 1996; and

c. The March 12, 1996 Motion to Dismiss filed by OPC and joined by Intervenor Amelia Island Community Association, Residence Condominium, Residence Property Owners Association, Amelia Retreat Condominium Association, Amelia Surf and Racket Property Owners Association and Sandpiper Association ("Nassau Associations"), the Concerned Citizens of Lehigh Acres ("Lehigh Acres"), Sugarmill Woods Civic Association, Inc. ("Sugarmill Woods"), Spring Hill Civic Association, Inc. ("Spring Hill"), Marco Island Civic Association, Inc. ("Marco Island"), Harbour Woods Civic Association ("Harbour Woods"), the Board of Supervisors of the East County Water Control District ("East County Water Control

District"), and Citrus County.

3. Section 120.57(1)(b)5. authorizes the recovery of a reasonable attorney's fee and related expenses incurred in connection with any motion filed by an opposing party in a Section 120.57(1), Florida Statutes proceeding for an improper purpose, including motions filed for a frivolous purpose. The recovery of a reasonable attorney's fee and related expenses is authorized under the statute where the moving party fails to demonstrate a reasonably clear legal justification for the motion at issue. Mercedes Lighting and Electrical Supply, Inc. v. State, Department of General Services, 567 So.2d 272, 278 (Fla. 1st DCA 1990). As with its federal counterpart, Rule 11, Federal Rules of Civil Procedure, the purpose of Section 120.57(1)(b)5. is "... to discover dilatory or abusive tactics and to streamline the litigation process. The rule is aimed at deterrence, not fee shifting or compensating the prevailing party." Id., 560 So.2d at 276.

4. SSU maintains that the three motions identified above were filed for an improper or frivolous purpose and that no clear legal justification existed for the filing of the motions.

II. OPC'S SECOND MOTION TO CAP INTERIM RATES AND MOTION TO DISMISS SSU'S SUPPLEMENTAL PETITION FOR INTERIM REVENUE RELIEF

5. On August 30, 1995, OPC filed its Motion to Dismiss SSU's Initial Request for An Interim Increase in Rates. OPC's Motion was denied by Order No. PSC-95-1327-FOF-WS issued November 1, 1995. Despite the clear and unambiguous decision of the Commission

denying OPC's Initial Motion to Dismiss SSU's Initial Request for an Interim Increase in Rates, OPC filed a (Second) Motion to Dismiss SSU's Supplemental Petition for Interim Revenue Relief. OPC's (Second) Motion to Dismiss SSU's Supplemental Petition for Interim Revenue Relief was filed on December 4, 1995. SSU's Response was filed on December 11, 1995. OPC's (Second) Motion to Dismiss SSU's Supplemental Petition for Interim Revenue Relief was denied for the same reasons set forth in Order No. PSC-95-1327-FOF-WS which denied OPC's Initial Motion to Dismiss SSU's Initial Request for an Interim Increase in Rates. See Order No. PSC-96-0125-FOF-WS issued January 25, 1996, at 13.

6. On September 15, 1995, OPC filed its First Motion to Cap Interim Rates in this proceeding. The motion was denied by Order No. PSC-95-1327-FOF-WS, issued November 1, 1995. Despite the clear and unambiguous decision of the Commission denying OPC's First Motion to Cap Interim Rates, OPC filed a Second Motion to Cap Interim rates on December 4, 1995. SSU filed its Response on December 11, 1995. OPC's Second Motion to Cap SSU's Maximum Interim Rates also was denied for the same reasons OPC's Initial Motion to Cap SSU's Maximum Interim Rates was denied pursuant to Order No. PSC-95-1327-FOF-WS. See Order No. PSC-96-0125-FOF-WS issued January 25, 1996, at 14.

7. Based on the foregoing facts, no legal justification existed for the filing of OPC's Second Motion to Cap SSU's Maximum Interim Rates or OPC's (Second) Motion to Dismiss SSU's Supplemental Petition for Interim Revenue Relief. Accordingly,

under Section 120.57(1)(b)5. Florida Statutes (1995), SSU is entitled to recover its attorney's fees and costs incurred in the preparation and filing of its Responses to these motions.

III. THE MARCH 12, 1996 MOTION TO DISMISS

8. On March 12, 1996, OPC filed a Motion to Dismiss SSU's Amended Application for Increased Water and Wastewater Rates ("Amended Application"). This motion was filed despite the fact that, by SSU's count, eight previous motions to dismiss filed by OPC had been denied in this proceeding. The March 12, 1996 motion to dismiss was joined by Intervenors identified in paragraph 2(c) above. A copy of the March 12, 1996 Motion to Dismiss is attached hereto as Exhibit "A".

9. On March 19, 1996, SSU filed its Response in Opposition to the March 12, 1996 Motion to Dismiss. A copy of SSU's Response to the March 12, 1996 Motion to Dismiss is attached hereto as Exhibit "B" and incorporated herein by reference. SSU's Response to the March 12, 1996 Motion to Dismiss establishes that there clearly was and is no legal justification for the March 12, 1996 Motion to Dismiss.

The letters from Lt. Governor McKay and Secretary Dusseau to the Chairman

10. OPC and the other Intervenors allege that SSU's Amended Application should be dismissed in response to the alleged misconduct of SSU in connection with letters sent to the Chairman from Lt. Governor McKay and Secretary of Commerce Dusseau requesting information concerning SSU. SSU maintains that the letters were not ex parte communications as they do not address the

merits of the instant proceeding nor do they request a favorable result on behalf of SSU. Nonetheless, the Chairman treated the letters as ex parte communications and provided a copy to all parties authorizing the parties to file a written response within ten days as required under Section 350.042(4), Florida Statutes. In support of dismissal, the movants cite Jennings v. Dade County, 589 So.2d 1337 (Fla. 3rd DCA 1991). The Jennings decision unambiguously holds that any remedial action ordered by a tribunal in response to an alleged ex parte communication must be bottomed on an allegation of prejudice arising from the ex parte communication. In this case, there is no allegation of prejudice in connection with the letters sent to the Chairman by Lt. Governor McKay and Secretary Dusseau, nor could there be, as the movants were provided ten days to file a response. Further, the Commission's authority is limited by statute. See, e.g., City of Cape Coral v. GAC Utilities, Inc., of Florida, 281 So .2d 493 (Fla. 1973). Section 350.042, Florida Statutes, does not authorize the Commission to dismiss a proceeding in response to an ex parte communication. The only remedy provided by the statute is authorization for a commissioner "... if he or she deems it necessary to eliminate the effect of an ex parte communication received by him or her, (to) withdraw from the proceeding...."

11. The lack of legal justification for the March 12, 1996 Motion to Dismiss was exacerbated by the misrepresentations made by counsel for the Intervenors at the April 16, 1996 oral argument on the motion. On March 19, 1996, at the Agenda Conference hearing on

the Intervenors' Motion to Transfer this proceeding to the Division of Administrative Hearings, counsel for Intervenors and counsel for OPC openly acknowledged on several instances that they were not claiming any prejudice as a result of the letters from Lt. Governor McKay and Secretary Dusseau. See copy of excerpts of transcript from March 19, 1996 Agenda Conference attached hereto as Exhibit "C". Nonetheless, at the oral argument on the Motion to Dismiss on April 16, 1996, counsel for Intervenors and counsel for OPC advised the Commission that the March 12, 1996 Motion to Dismiss was premised on a claim of prejudice -- a representation not found within the four corners of the March 12, 1996 Motion to Dismiss and expressly inconsistent with previous representations made at the March 19, 1996 Agenda Conference regarding the same subject matter. Further, in an effort to secure a ruling granting the Motion to Dismiss, counsel for OPC argued that the letter from Lt. Governor McKay does address the merits of this case. In so doing, counsel for OPC read to the Commission a portion of the last paragraph of Lt. Governor McKay's letter leaving out the words in bold type below:

I would appreciate any information you might be able to provide me on the overall economic and financial consequences facing SSU **as outlined in the attached letter so I can respond to Mr. Sandbulte's concerns.**

See copy of excerpt of transcript from April 16, 1996 Agenda Conference attached hereto as Exhibit "D".

12. The March 12, 1996 Motion to Dismiss attached the letter from Lt. Governor McKay but failed to attach the letter of Mr.

Sandbulte to Governor Chiles referenced in Lt. Governor McKay's letter. Mr. Sandbulte's letter confirms that the concerns expressed by Mr. Sandbulte related to a decision of the Commission in Docket No. 920199-WS -- not the instant proceeding. OPC's failure to fully advise the Commission as to the full content of Lt. Governor McKay's letter was nothing less than an unjustified attempt to inaccurately portray Lt. Governor McKay's letter as a letter addressing the merits of the instant proceeding. SSU would submit that if there is any misconduct in this proceeding, it is that of OPC and other Intervenors in failing to accurately inform the Commission of the information concerning SSU **actually sought** in Lt. Governor McKay's letter.

Alleged Interference with Notice to Customers

13. Second, the movants seek dismissal based on allegations that SSU has "interfered" with the Notice to Customers. The movants cite no authority in support of dismissal on this ground. To the contrary, SSU has the constitutional right to communicate its views on substantive issues with its customers without interference from or granting an opportunity to respond to OPC or any other Intervenor. Pacific Gas and Electric Company v. Public Utilities Commission of California, 475 U.S. 1, 89 L.Ed. 2nd 1, 106 S.Ct. 903 (1986); In the matter of AN INVESTIGATION OF THE SOURCES OF SUPPLY AND FUTURE DEMAND OF KENTUCKY-AMERICAN WATER COMPANY, Case No. 93-434, Kentucky Public Service Commission, order issued March 3, 1995. Attached as Composite Exhibit "E" are affidavits of SSU employees who attended one or more of the customer meetings

held by SSU. These affidavits, together with the prefiled rebuttal testimony of SSU witness Ida Roberts, refute any alleged interference with the customer notice.

Alleged Interference with Citizens' Right to Counsel

14. Last, the movants seek dismissal on the ground that SSU allegedly interfered with the Citizens' right to counsel. This allegation is premised on an allegation that SSU advised its customers at a customer meeting held by SSU that OPC had a conflict in representing customers on the issue of what rate structure should be authorized by the Commission in this proceeding. Again, no authority in support of dismissal is cited by the movants. The facts are that this is precisely the position that OPC has taken at customer service hearings in this proceeding and, additionally, formed the basis for OPC's Motion to Appoint Separate Counsel for customers supporting different rate structures, a motion denied by Order No. PSC-95-1387-PCO-WS issued November 8, 1995. OPC's position that it has a conflict on this rate structure issue is consistent with the position it has taken in past rate proceedings before the Commission. Moreover, the prefiled rebuttal testimony of Ida Roberts and the affidavits of many SSU employees contained in Composite Exhibit "E" refute the movants' allegations.

15. On April 16, 1996, the Commission deferred ruling on the March 12, 1996 Motion to Dismiss pending the testimony of witnesses during the final hearing concerning the allegations set forth in the Motion to Dismiss.

IV. CONCLUSION

16. For the foregoing reasons, SSU submits that no clear legal justification existed or exists for OPC's Second Motion to Cap SSU's Maximum Interim Rates, OPC's (Second) Motion to Dismiss SSU's Supplemental Petition for Interim Revenue Relief, or OPC/Intervenors' March 12, 1996 Motion to Dismiss. The facts demonstrate that these Motions were filed for an improper or frivolous purpose.

17. SSU has retained the undersigned attorneys to represent it in this proceeding and has agreed to pay said attorneys reasonable attorneys' fees and expenses for their services. The attorneys' fees and expenses incurred by SSU in connection with the three motions previously discussed herein, as well as the attorneys' fees and costs incurred by SSU for preparation and argument of this Motion before the Commission, should be reimbursed to SSU.

WHEREFORE, SSU respectfully requests the Commission to enter an Order granting SSU the following relief:

A. Recovery from OPC of reasonable attorneys' fees and expenses incurred by SSU in connection with OPC's Second Motion to Cap SSU's Maximum Interim Rates;

B. Recovery from OPC of reasonable attorneys' fees and expenses incurred by SSU in connection with OPC's (Second) Motion to Dismiss SSU's Supplemental Petition for Interim Revenue Relief;

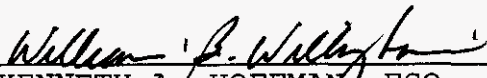
C. Recovery from OPC, Nassau Associations, Lehigh Acres, Sugarmill Woods, Spring Hill, Marco Island, Harbour Woods, East

County Water Control District and Citrus County of reasonable attorneys' fees and expenses incurred by SSU in connection with the March 12, 1996 Motion to Dismiss;

D. Recovery from OPC, Nassau Associations, Lehigh Acres, Sugarmill Woods, Spring Hill, Marco Island, Harbour Woods, East County Water Control District and Citrus County of reasonable attorneys' fees and expenses incurred by SSU in preparing this Motion for Attorneys' Fees and Costs and arguing it before the Commission; and

E. If the Commission finds that such fees and expenses should be awarded to SSU pursuant to section 120.57(1)(b)5., Florida Statutes, SSU requests the opportunity to submit documentation and other evidence in support of such fees and expenses.

Respectfully submitted,


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WILLIAM B. WILLINGHAM, ESQ.
Rutledge, Ecenia, Underwood,
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P. O. Box 551
Tallahassee, FL 32302-0551
(904) 681-6788

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 SSU's Motion for Attorneys' Fees and Costs was furnished by U. S. Mail and/or hand delivery(*) to the following on this 29th day of April, 1996:

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Inverness, FL 34450


KENNETH A. HOFFMAN, ESQ.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

3/12/96

In re: Application for a rate)
increase for Orange-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 by Southern States)
Utilities, Inc.)

Docket No. 950495-WS

Filed: March 12, 1996

MOTION TO DISMISS

The Citizens of Florida ("Citizens"), by and through Jack Shreve, Public Counsel, joined by Amelia Island Community Association, Residence Condominium, Residence Property Owners Association, Amelia Retreat Condominium Association, Amelia Surf and Racquet Property Owners Association and Sandpiper Association ("Nassau Associations"), by and through Arthur I. Jacobs, their attorney, the Concerned Citizens of Lehigh Acres ("Lehigh Acres") Sugarmill Woods Civic Association, Inc. ("Sugarmill Woods"), Spring Hill Civic Association, Inc. ("Spring Hill"), Marco Island Civic Association, Inc. ("Marco Island"), Harbour Woods Civic Association ("Harbour Woods"), and the Board of Supervisors of the East County Water Control District ("East County Water Control District"), by and through Michael B. Twomey, their attorney, move the Commission to dismiss the application for a rate increase of Southern States Utilities, Inc. ("Southern States") because of misconduct by

Southern States interfering with due process rights of the parties. This misconduct includes (1) soliciting ex parte communications intended to influence the Commission, (2) interference with the notice to customers, and (3) interference with the Citizens' right to counsel.

SOLICITING EX PARTE COMMUNICATIONS INTENDED TO INFLUENCE THE COMMISSION

1. Public documents obtained by Michael B. Twomey, attorney for Lehigh Acres, Sugarmill Woods, Marco Island and Harbour Woods, show that Southern States' lobbyist Jeff Sharkey solicited both the Lieutenant Governor and the Secretary of Commerce to contact the Florida Public Service Commission. A draft letter faxed from Mr. Sharkey to the Lieutenant Governor on December 13, 1995, expressed concern about the regulatory environment at the Commission which resulted in a year-to-date loss for the utility. It also expressed concern if the Commission were to place Southern States in serious financial jeopardy. The draft letter sent by Mr. Sharkey to the Lieutenant Governor asked the Chairman of the Commission to respond to the Lieutenant Governor about the overall economic and financial consequences facing Southern States, as outlined in a letter sent by Mr. Arend Sandbolte, chairman of Southern States' parent company Minnesota Power & Light, to the Governor.

2. As the paid lobbyist of Southern States, it was well known to Mr. Sharkey that both this case and a case on remand from

the First District Court of Appeals were matters pending before the Commission. Mr. Sharkey's intent, on behalf of Southern States, was to influence the Commission on pending matters, whether or not those matters were known to the Lieutenant Governor, to the prejudice of other parties in the case.

3. Members of the Florida Public Service Commission are nominated to the Governor by the Florida Public Service Commission Nominating Council. The Governor appoints members of the Florida Public Service Commission from those nominated by the Florida Public Service Commission Nominating Council. Section 350.031, Florida Statutes (1995). The power of the Governor over appointments to the Florida Public Service Commission was known to Mr. Sharkey and Southern States.

4. On behalf of Southern States, Mr. Sharkey made a request to the Secretary of Commerce similar to the request made to the Lieutenant Governor. A fax dated December 13, 1995, forwarding a draft letter to the Secretary of Commerce, states that "the situation is critical." Another fax dated December 21, 1995, displays handwritten notes stating "Deadline is Jan 3rd," the day before the Commission voted to increase the rates charged customers by Southern States on an interim basis. The inscription stating "Deadline is Jan 3rd" came from a communication from Mr. Sharkey's office to the executive secretary for the Secretary of Commerce.

5. Based on the solicitations made by Southern States' lobbyist, both the Lieutenant Governor and the Secretary of Commerce sent letters to the Commission while this case was pending.¹

6. The gravity of Southern States' misconduct can be seen by an analogy to a civil suit in circuit court. Suppose that Southern States had brought a multi-million dollar law suit in circuit court. Their action in soliciting the Lieutenant Governor to contact the Commission in this case is tantamount to contacting the employers of jurors in a civil suit and asking the employers to influence the jurors. No circuit court judge would condone this sort of behavior, and neither should the Commission.

7. Jennings v. Dade County, 589 So.2d 1337 (Fla. 3d D.C.A. 1991) sets the standard for a court's review of the effect of ex parte communications on quasi-judicial proceedings, such as this proceeding under section 120.57(1), Florida Statutes (1995). The allegation of prejudice resulting from ex parte contacts with the decision makers in a quasi-judicial proceeding states a cause of action. Upon the aggrieved party's proof that an ex parte contact occurred, its effect is presumed to be prejudicial unless the defendant proves the contrary by competent evidence. In determining the prejudicial effect of an ex parte communication,

¹ Copies of the letters are attached to this motion as exhibit 1.

the trial court considers whether, as a result of improper ex parte communications, the agency's decision making process was irrevocably tainted so as to make the ultimate judgment of the agency unfair, either as to an innocent party or to the public interest that the agency was obliged to protect.

8. In making this determination, a number of considerations may be relevant: the gravity of the ex parte communication; whether the contacts may have influenced the agency's ultimate decision; whether the party making the improper contacts benefitted from the agency's ultimate decision; whether the contents of the communications were unknown to opposing parties, who therefore had no opportunity to respond; and whether vacation of the agency's decision and remand for new proceedings would serve a useful purpose.

9. The criteria set forth in Jennings applies to an ordinary ex parte contact, but the ex parte contact procured by Southern States was anything but ordinary. Southern States deliberately procured the ex parte contact through the office that appoints Commissioners to their position. It thus carried a significance far beyond an ex parte contact coming directly from Southern States. While the Jennings case focuses on the effect of the ex parte communication on the decision maker, this motion focuses instead on the misconduct of Southern States in attempting to influence the Commission, whether those actions by Southern States

were successful or not.

10. A deliberate and contumacious disregard of a court's authority warrant dismissal, as will bad faith, willful disregard or gross indifference to an order of a court, or conduct which evinces deliberate callousness. Watson v. Peskoe, 407 So.2d 954, 956 (Fla. 3d D.C.A. 1981); Bedflower v. Cushman & Wakefield of Florida, Inc., 510 So.2d 1130, 1131 (Fla. 2d D.C.A. 1987); Morales v. Perez, 445 So.2d 393 (Fla. 3d D.C.A. 1984); Merrill Lynch Pierce Fenner & Smith, Inc., v. Haydu, 413 So.2d 102 (Fla. 3d D.C.A. 1982). Southern States' efforts to influence the Commission reflect a deliberate and contumacious disregard of the Commission's authority, show bad faith, and evince deliberate callousness. Their request for a rate increase should therefore be dismissed.

11. The broad authority conferred by section 367.121(1)(g), Florida Statutes (1995) empowers the Commission to dismiss Southern States' application for a rate increase on account of this misconduct. This section provides the Commission the power, in the exercise of its jurisdiction, to exercise all judicial powers, issue all writs, and do all things necessary or convenient to the full and complete exercise of its jurisdiction and the enforcement of its order and requirements.

12. Another area expressly reflects the Commission's power to dismiss this case for the type of abuse committed by Southern

States. Commission rules authorize dismissal for discovery abuses. Rule 25-22.034, Florida Administrative Code. Presumably, this rule is based on the notion that such abuses can deprive parties of due process in a proceeding. The attempts of Southern States to gain an advantage through outside influence are far more egregious than a discovery abuse. Such attempts subvert the fundamental notion of a fair process and deprive parties of due process. If dismissal is permitted for discovery abuse, certainly it is compelled for knowing and intentional efforts to exert ex parte influence on the Commission. The rule of law demands that such behavior be answered with grave consequences. The Commission cannot condone this type of behavior.

INTERFERENCE WITH THE NOTICE TO CUSTOMERS

13. Rule 25-22.0047, Florida Administrative Code, requires a notice to be sent to customers concerning the rate increase request. After considerable controversy, the Commission required Southern States to send out a second notice to customers about the rate increase request and held a second series of hearings throughout the state.

14. The notice carries a purpose similar to a summons in a civil court proceeding. It appraises the party being sued of the nature of the suit and lets that party know the extent to which

their interests may be affected.

15. Southern States directly interfered with that notice, and attempted to nullify its effect, by sending postcards to customers shortly after customers received the Commission's notice and shortly before the Commission's scheduled customer hearings.² The postcards boldly insinuated that the notice required by the Commission was inadequate. The first sentence on the post card asked "Are you confused about all the literature you've received about the upcoming FPSC hearing concerning statewide uniform rate structure?" It followed that question by stating, "If so, you are invited to attend an informative meeting with SSU representatives to discuss uniform rates and any of your concerns." It then followed that statement with only its side of an argument on which there are two sides.

16. Even worse, the postcards led customers to believe that the only issue affecting their rates in this case is the uniform rates vs. stand-alone rates issue. No mention is made of the amount of increased revenue Southern States seeks in this case.

17. At the meetings held by Southern States shortly before the Commission's meetings, Southern States claimed either that they already knew how much additional revenue the Commission would give

² An example of the postcards is attached to this motion as exhibit 2.

them in this case or that the Commission routinely gives the company 70% of what they ask. With the publicity surrounding Southern States' attempts to influence the Commission through ex parte communications, this claim may have given customers the impression that the company's ex parte attempts at influence were successful and that customers therefore need be concerned only with the issue of uniform rates vs. stand-alone rates.

18. Southern States subverted the purpose of the second notice to customers. At best, it tried to discount the importance of revenue requirements to customers' rates. At worst, it confirmed citizens' fears that Southern States successfully influenced the Commission through ex parte contacts and that the amount of additional revenue the Commission will give to Southern States from customers is a foregone conclusion. Either way, it was an improper attempt to obstruct the notice required by the Commission and further interfere with the due process rights of the Citizens in this case.

INTERFERENCE WITH THE CITIZENS' RIGHT TO COUNSEL

19. Section 350.0611, Florida Statutes (1995) states that it is the duty of the Public Counsel to represent the Citizens of Florida before the Florida Public Service Commission. In the process of interfering with the notice to customers required by the Commission, Southern States has also attempted to interfere with

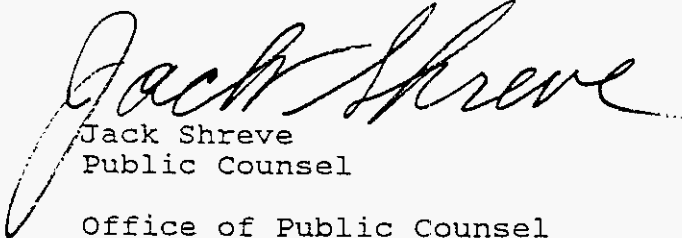
the Citizens' right to representation by the Public Counsel.

20. At the private meetings described in the postcards sent to customers, Southern States repeatedly advised the Citizens that the amount of increased revenue the utility would receive from customers was a foregone conclusion. When asked about public representation, the company advised customers that the Public Counsel had a conflict with what, according to Southern States, was the only important remaining issue in the case: uniform rates vs. stand-alone rates. Southern States thereby attempted to prejudice the representation of customers by the Public Counsel by attempting to persuade customers that the Public Counsel could do nothing for them.

21. This outrageous interference with the representation of customers by the Public Counsel represents further misconduct which, like the other misconduct, deprives parties of due process in this case and shatters the fairness of the process.

WHEREFORE, the Citizens, Nassau Associations, Lehigh Acres, Sugarmill Woods, Spring Hill, Marco Island, Harbour Woods, and East County Water Control District respectfully request the Commission to dismiss Southern States' application for a rate increase and to order a refund of all increased interim revenue collected so far by Southern States.

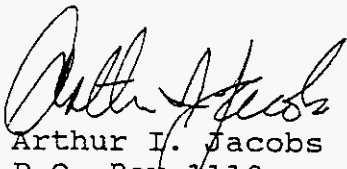
Respectfully submitted,



Jack Shreve
Public Counsel

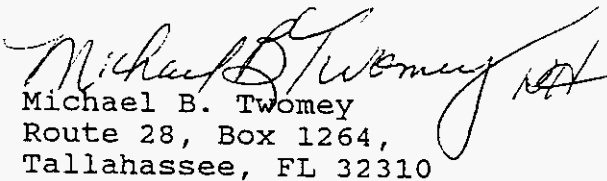
Office of Public Counsel
c/o The Florida Legislature
111 West Madison Street
Room 812
Tallahassee, FL 32399-1400

Attorneys for the Citizens
of the State of Florida



Arthur I. Jacobs
P.O. Box 1110
Fernandina Beach, FL 32035-1110

Attorney for the Nassau Associations



Michael B. Twomey
Route 28, Box 1264,
Tallahassee, FL 32310

Attorney for Lehigh Acres, Sugarmill Woods,
Spring Hill, Marco Island, Harbour Woods, and
East County Water Control District

CERTIFICATE OF SERVICE
DOCKET NO. 950495-WS

I HEREBY CERTIFY that a correct copy of the foregoing has been furnished by U.S. Mail or *hand-delivery to the following parties on this 12th day of March, 1996.


*Ken Hoffman, Esq.
William B. Willingham, Esq.
Rutledge, Ecenia, Underwood
Purnell & Hoffman, P.A.
P.O. Box 551
Tallahassee, FL 32302-0551

*Lila Jaber, Esq.
Division of Legal Services
Fla. Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399

Brian Armstrong, Esq.
Matthew Feil, Esq.
Southern States Utilities
General Offices
1000 Color Place
Apopka, FL 32703

Kjell W. Petersen
Director
Marco Island Civic Assoc.
P.O. Box 712
Marco Island, FL 33969

Larry M. Haag, Esq.
County Attorney
111 West Main Street
Suite B
Inverness, Florida 34450



Charles J. Beck
Deputy Public Counsel



OFFICE OF THE LIEUTENANT GOVERNOR

December 21, 1995

Ms. Susan F. Clark, Chair
Public Service Commission
Gunther Building
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0855

Dear Commissioner Clark:

I have had several discussions recently on the direction of the state's water with the president of Southern State Utilities. They are very interested in being part of the dialogue. We are having to protect and preserve one of our most valuable resources.

Although they are not a large player in the overall water management policy discussions presently underway through various legislative and executive office forums, as the state's largest private water utility they play a valuable role in preserving the quality of Florida's water by purchasing and upgrading small, often rural, failed water and wastewater systems.

In addition, I have received a copy of a letter sent to Governor Chiles by Mr. Arend Sandbulte, chairman and CEO of Minnesota Power, that details the current economic impact of recent Public Service Commission decisions on Southern States Utilities.

Mr. Sandbulte, who has joined the Florida Council of 100, because of his interest in supporting our efforts to generate a positive economic development and jobs climate in Florida for businesses and citizens, is very concerned about the regulatory environment at the PSC -- which over the last year have resulted in a year-to-date loss of \$453,749 and reduced the utilities rate of return on investment to -.43 percent.

I realize that your rate making decisions are very complicated and our office would not question those detailed, case specific decisions. However, I would be very concerned if we were to place in serious financial jeopardy a unique private water utility that is providing quality water and wastewater treatment facilities throughout the state.

I would appreciate any information you might be able to provide me on the overall economic and financial consequences facing SSU as outlined in the attached letter so I can respond to Mr. Sandbulte's concerns.

Sincerely,

A handwritten signature in cursive script that reads "Buddy MacKay".

Buddy MacKay

KHM/kcr

attachment

EXHIBIT 1

THE CAPITOL
TALLAHASSEE, FLORIDA 32399-0001

A RECYCLED PAPER PRODUCT PRINTED WITH SOY INK

8709



107 West Gaines Street
Secretary Charles Dusseau

GOVERNOR
Lawton Chiles

January 2, 1996

Office of the
Secretary
(904) 485-3104
Fax (904) 922-9150

Economic
Development
(904) 486-6300
Fax (904) 922-9595

International Trade
and Development
(904) 486-6124
Fax (904) 487-1407

Tourism
(904) 922-6557
Fax (904) 922-9329

Administrative
Services
(904) 486-9377
Fax (904) 921-2174

Susan F. Clark, Chairperson
Florida Public Service Commission
Gunther Building
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0855

Dear Commissioner Clark:

I recently received a copy of a letter sent to Governor Chiles by Mr. Arend Sandbulte, Chairman and CEO of Minnesota Power in Duluth, Minnesota. As you are aware, Minnesota Power owns Southern States Utilities, a water and wastewater utility company based in Apopka. This letter outlined his corporation's concerns regarding the PSC's recent uniform rate ruling pertaining to Southern States Utilities (PSC-95-1292-FOF-WS).

Businesses frequently contact this Department with concerns about regulatory decisions, and the PSC under your leadership has been very supportive of our efforts to ensure a fair and favorable setting for economic development in Florida. Your recent cooperation on the economic development expenditures issue and the telephone area code issue are good examples. However, as you can imagine, one of the basic elements for business survival in any marketplace is a predictable and stable business climate. Without it, business managers are unable to make informed decisions which can often make the difference between business survival and failure. An unpredictable environment, even in a regulated setting, can put tremendous financial pressure on firms such as SSU, which may lead them to rethink their investment in Florida and could cause businesses considering Florida as a site for expansion to go elsewhere.

In this case, I have asked a member of our staff, Nick Leslie, to consult with your staff and with the Water Policy Office in the Department of Environmental Protections. Nick will advise me on the reasoning behind the Commission's order and on what, if any, recourse might be available to Southern States Utilities. Nick can be reached at 487-2568.

Collins Building
107 West Gaines Street
Tallahassee, Florida 32399-2000

FLORIDA

8710

Susan F. Clark, Chairperson
January 2, 1996
Page Two

As always, I appreciate the cooperation of the Commission and thank you for your attention to this issue.

Sincerely,

A handwritten signature in cursive script that reads "Charles Dusseau". The signature is written in dark ink and is positioned below the word "Sincerely,".

Charles Dusseau
Secretary of Commerce

CD:ss

cc: Governor Lawton Chiles
Jeff Sharkey

8711

Are you confused about all the literature you've received about the upcoming FPSC hearing concerning a statewide uniform rate structure?

If so, you are invited to attend an informative meeting with SSU representatives to discuss uniform rates and any of your concerns.

What: How This Case Impacts Your Rates

When: January 16, 1996 at 11:00 a.m.

Where: Dinner Bell
12084 S. Williams Street (US 41)
Dunnellon, Florida
(352) 489-2550

"Uniform rates" charge each customer the same based on the amount of water used or wastewater treated. They spread the costs of complying with U.S. and statewide environmental means of protecting Florida's precious interconnected water resources and providing greatly improved rate stability for all SSU's customers, as well as reducing costs passed on to customers.

For more information, please call SSU's Communications Department at (407) 880-0058 or (800) 432-4501.

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, Highlands,) Docket No. 950495-WS
Lake, Lee, Marion, Martin,)
Nassau, Orange, Osceola, Pasco,)
Polk, Putnam, Seminole, St. Johns,) Filed: March 19, 1996
St. Lucie, Volusia and Washington)
Counties.)
_____)

SSU'S RESPONSE IN OPPOSITION TO
MARCH 12TH MOTION TO DISMISS
AND REQUEST FOR EVIDENTIARY HEARING

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 Dismiss and Request for Evidentiary Hearing filed on March 12, 1996 by the Office of Public Counsel ("OPC"); the Amelia Island Community Association, Residence Condominium, Residence Property Owners Association, Amelia Retreat Condominium Association, Amelia Surf and Racquet Property Owners Association and Sandpiper Association; the Concerned Citizens of Lehigh Acres; Sugarmill Woods Civic Association, Inc.; Spring Hill Civic Association, Inc.; Marco Island Civic Association, Inc.; Harbour Woods Civic Association; and, the Board of Supervisors of the East County Water Control District. In support of its Response, SSU states as follows:

EXHIBIT "B"

Introduction

1. The March 12th Motion to Dismiss is but the latest of OPC's efforts, joined by the other Intervenors, to distract this Commission from the merits of this rate case. The Commission is asked to rule on what amounts to the Ninth Motion to Dismiss this rate case. Once again, as in the past, there is no factual or legal basis to dismiss the case. Once again, as in the past, OPC offers no applicable legal precedent which would support dismissal of the case.

2. The March 12th Motion to Dismiss, premised on SSU's alleged misconduct, is frivolous. Having lost eight previous motions to dismiss (including two motions to reestablish the official date of filing), OPC and the other Intervenors persist in running up the tab on SSU's ratepayers (and their own clients) with yet another motion to dismiss which has no basis in fact or law. OPC's fondness for motions to dismiss should not be taken lightly. Each motion to dismiss filed by OPC in this proceeding, no matter how unsubstantiated, places SSU at significant risk requiring SSU to research the law which may apply to OPC's allegations, prepare a response and argue the points before the Commission. There is no question that OPC has needlessly increased the costs of litigating this rate case and continues to do so with the March 12th Motion to Dismiss. This type of conduct should not be condoned by the Commission.

3. Specifically, OPC previously has asked the Commission to dismiss this rate case on the following occasions:

a. August 29, 1995 - OPC's First Motion to Dismiss and/or Reestablish Official Date of Filing. The motion was denied.¹

b. August 30, 1995 - OPC's First Motion to Dismiss SSU's Request for Interim Increase in Rates. The motion was denied.²

c. September 8, 1995 - OPC's Second Motion to Dismiss. The motion was denied.³

d. September 14, 1995 - OPC's Third Motion to Dismiss. The motion was denied.⁴

e. September 22, 1995 - OPC's Fourth Motion to Dismiss. The motion was denied.⁵

f. October 17, 1995 - OPC's Fifth Motion to Dismiss. The motion was denied.⁶

g. December 4, 1995 - OPC's Motion to Dismiss SSU's Supplemental Petition for Interim Revenue Relief. The motion was denied.⁷

¹Order No. PSC-95-1352-FOF-WS issued November 1, 1995.

²Order No. PSC-95-1327-FOF-WS issued November 1, 1995.

³Order No. PSC-95-1432-FOF-WS issued November 27, 1995.

⁴Id.

⁵Id.

⁶Order No. PSC-95-1568-FOF-WS issued December 18, 1995.

⁷Order No. PSC-96-0125-FOF-WS issued January 25, 1996.

h. December 18, 1995 - OPC's (Second) Motion to Reestablish Official Filing Date. The motion was denied.⁸

4. In addition, OPC has filed two motions to cap SSU's Maximum Interim Rates. Both were denied.⁹

5. Now, once again, joined by other Intervenors, OPC moves to dismiss SSU's Amended Application for Increased Water and Wastewater Rates, etc. In denying the previous motions to dismiss, the Commission has repeatedly stated, and correctly so, that dismissal of a case is a drastic sanction that should be used only in extreme situations and only where the moving party is able to demonstrate meaningful prejudice.¹⁰ For the reasons stated below, the March 12th Motion to Dismiss must be denied.

Allegations of Ex Parte Contacts

6. OPC and the other Intervenors argue that SSU has solicited ex parte communications to the Commission which warrant dismissal of this proceeding. There is no basis in fact or law for this assertion.

7. The letter dated December 21, 1995 from Lieutenant Governor McKay to Chairman Clark is attached as Exhibit 1 to the Motion to Dismiss. Exhibit 1 fails to include a letter dated November 21, 1995 from Arend Sandbulte, Chief Executive Officer of

⁸Order No. PSC-96-0279-FOF-WS issued February 26, 1996.

⁹Order Nos. PSC-95-1327-FOF-WS issued November 1, 1995 and PSC-96-0125-FOF-WS issued January 25, 1996.

¹⁰See, e.g., Order Nos. PSC-95-1352-FOF-WS, at 3 and PSC-95-1432-FOF-WS, at 4, citing Carr v. Dean Steel Buildings, Inc., 619 So.2d 392 (Fla. 1st DCA 1993) and Neal v. Neal, 636 So.2d 810 (Fla. 1st DCA 1994).

Minnesota Power, to Governor Chiles voicing concerns about the impact on SSU and its customers of the Commission's October 19, 1995 Refund Order in a separate docket (Docket No. 920199-WS)¹¹. Lieutenant Governor McKay's letter speaks for itself. It is a follow-up to Mr. Sandbulte's letter to Governor Chiles and specifically requests Chairman Clark to provide "... any information ... on the overall economic and financial consequences facing SSU as outlined in the attached letter so I can respond to Mr. Sandbulte's concerns."

8. Similarly, the letter dated January 2, 1996 from Secretary of Commerce Dusseau to Chairman Clark attached in Exhibit 1 to the Motion to Dismiss speaks to SSU's role as a large water and wastewater utility in Florida, the need for a predictable and stable business and regulatory environment, and specifically asks for the reasoning behind the Refund Order in Docket No. 920199-WS¹² and information regarding any recourse available to SSU.

9. Section 350.042(1), Florida Statutes, states that a commissioner "shall neither initiate nor consider ex parte communications concerning the merits ... in any (s. 120.57) proceeding" (Emphasis supplied). The letters from Lieutenant Governor McKay and Secretary Dusseau contain no information relevant to the merits of this proceeding. The letters state no position in support of or against any substantive issue or

¹¹Order No. PSC-95-1292-FOF-WS, issued October 19, 1995 in Docket No. 920199-WS.

¹²Id.

Commission action; the letters simply requested information concerning SSU and the rationale behind an order of the Commission issued in a different docket. In sum, the letters do not address the merits of this proceeding and are not ex parte communications as contemplated by Section 350.042(1), Florida Statutes.

10. Although the letters do not address the merits of this proceeding, they were nonetheless treated by Chairman Clark as ex parte communications. Section 350.042(4), Florida Statutes, outlines the procedures to be followed in such cases:

(4) If a commissioner knowingly receives an ex parte communication relative to a proceeding other than as set forth in subsection (1), to which he or she is assigned, he or she must place on the record of the proceeding copies of all written communications received, all written responses to the communications, and a memorandum stating the substance of all oral communications received and all oral responses made, and shall give written notice to all parties to the communication that such matters have been placed on the record. Any party who desires to respond to an ex parte communication may do so. The response must be received by the commission within 10 days after receiving notice that the ex parte communication has been placed on the record.

11. In this case, Chairman Clark meticulously followed the above procedures.

a. By memorandum dated December 28, 1995, Chairman Clark filed the Lieutenant Governor's letter and the attached letter of Mr. Sandbulte in the record of this proceeding with instructions to the Director of the Division of Records and Reporting to provide notice of the letters to all parties in this docket and to inform the parties that they had 10 days from receipt

to file a response. See Exhibit A.

b. By memorandum dated January 3, 1996, Chairman Clark filed Secretary Dusseau's letter in the record of this proceeding with the same instructions outlined above. See Exhibit B.

c. By memorandum dated January 4, 1996, the Director of the Division of Records and Reporting provided copies of the letters to the parties of record in this proceeding with notice that a party desiring to respond could do so within 10 days of receipt thereof. See Exhibit C.

d. By memorandum dated January 5, 1996, Chairman Clark filed a copy of her January 5, 1996 response letter to Lieutenant Governor McKay in the record of this proceeding. See Exhibit D.

e. By memorandum dated January 11, 1996, Chairman Clark filed a copy of her January 11, 1996 response letter to Secretary Dusseau in the record of this proceeding. See Exhibit E.

12. OPC filed no response to the letters at issue. Mr. Twomey filed a copy of his letter dated January 3, 1996 to Lieutenant Governor McKay, a four-page diatribe replete with unsubstantiated allegations concerning SSU and a host of personal invectives directed to Lieutenant Governor McKay, Secretary Dusseau and Mr. Sandbulte. See Exhibit F. Mr. Twomey failed to provide a copy of his January 3 letter to SSU thereby making Mr. Twomey's letter an ex parte communication.

13. Section 350.042(4), Florida Statutes, also sets forth the available remedy concerning an ex parte communication which is determined to be sufficiently prejudicial in terms of its impact on

a commissioner:

The commissioner may, if he or she deems it necessary to eliminate the effect of an ex parte communication received by him or her, withdraw from the proceeding, in which case the chair shall substitute another commissioner for the proceeding.

Simply put, the Legislature has determined that the appropriate remedy for a party prejudiced by an ex parte communication is withdrawal of the commissioner or commissioners allegedly prejudiced by the communication. The intent of the Legislature, of course, is to ensure that all parties before the Commission receive a fair hearing before unbiased commissioners.

14. The remedy available under Section 350.042(4) has been pursued, in effect, by Mr. Twomey and his clients, who have filed a motion requesting the Commission to transfer this proceeding to the Division of Administrative Hearings ("DOAH"). In seeking a transfer of this proceeding to DOAH, the Intervenors represented by Mr. Twomey stop short of alleging that they have been prejudiced by virtue of the letters sent by the Lieutenant Governor and Secretary Dusseau, a sensible admission in light of the fact that, as they put it, "[n]o 'evidence' of any kind has been heard by any Commissioner in this case, let alone all of them."¹³ Further, the measures taken by Chairman Clark in placing the letters in the record of this proceeding and allowing all parties an opportunity to respond provides due process protection for any party claiming

¹³See Motion for Assignment of All Dockets Involving SSU to the Division of Administrative Hearings filed on February 16, 1996, at par. 22.

prejudice (although none have) as a result of the letters.¹⁴

15. OPC, on the other hand, has made no effort to respond to the letters at issue prior to the filing of the March 12th Motion to Dismiss. The January 4, 1996 memorandum referenced above provided OPC the opportunity to make a record filing asserting their response to the letters at issue. OPC filed nothing. The Intervenors represented by Mr. Twomey then pursued the remedy of transferring this proceeding to DOAH. In response to that Motion, OPC filed nothing. OPC has sat back and elected not to exercise their right to file a response to the letters at issue. OPC has sat back and elected not to join the request of the Intervenors represented by Mr. Twomey to transfer this case to DOAH. Instead, OPC attempts to create its own unsupported remedy, its acknowledged remedy of choice, the Motion to Dismiss.

16. OPC and the other Intervenors devote substantial discussion to the decision in Jennings v. Dade County, 589 So.2d 1337 (Fla. 3d DCA 1991). The Jennings decision made one thing very clear -- a party seeking to establish entitlement to a new hearing due to an ex parte communication must allege that the ex parte communication caused him prejudice. Id., 589 So.2d at 1342.¹⁵ The March 12th Motion to Dismiss contains no allegation that the parties have been prejudiced as a result of the letters from Lieutenant Governor McKay and Secretary Dusseau. In fact, the

¹⁴AGO 94-71.

¹⁵Indeed, in Jennings, the court remanded the proceeding to permit Jennings an opportunity to amend his complaint to allege prejudice arising from the ex parte communication.

Motion flatly admits that it does not even attempt to establish prejudice when it states:

While the Jennings case focuses on the effect of the ex parte communication on the decision maker, this motion focuses instead on the misconduct of Southern States in attempting to influence the Commission, whether those actions by Southern States were successful or not.¹⁶

17. The goals sought to be achieved by Section 350.042(4) and the Jennings decision are one and the same -- to ensure that a party prejudiced by an ex parte communication receives a fair hearing before an unbiased tribunal with the due process protections provided under Chapter 120, Florida Statutes. Prejudice must be alleged and proven. The alleged misconduct of a party is irrelevant. If prejudice is alleged and proven, the remedy is either a new hearing if a (tainted) hearing has been held¹⁷ or a new commissioner or commissioners if a hearing has not been held -- not dismissal of a pending proceeding which has not yet reached the hearing stage.

18. In sum, OPC and the other Intervenors have failed to even allege the requisite element of prejudice under the Jennings

¹⁶March 12th Motion to Dismiss, at par. 9.

¹⁷In Jennings, the Dade County Commission held a hearing on the zoning application allegedly affecting Jennings after an alleged oral ex parte communication between a representative of the applicant and a member or members of the Dade County Commission. In the instant case, the written communications from the Lieutenant Governor and Secretary Dusseau were submitted to Chairman Clark approximately four months prior to the scheduled final hearing, which has not yet begun, and parties were given an opportunity to provide written responses on the record.

decision. The Motion to Transfer SSU's cases to DOAH and the instant Motion to Dismiss both acknowledge a lack of prejudice and all parties were granted an opportunity to provide a response on the record to the letters at issue over three months before the beginning of the final hearing. Prejudice has not been alleged and cannot be shown. Accordingly, the Motion to Dismiss must be denied.¹⁸

SSU has not "interfered" with the Notice to Customers

19. OPC and the other Intervenors also seek dismissal based on factual misrepresentations that SSU has "interfered" with the Notice to Customers. There is no legal basis for dismissal on this point and none is cited in the Motion to Dismiss. Further, the factual grounds purporting to support the request are inaccurate.

20. The supplemental notices to customers outlined the requested rates under stand-alone, modified stand-alone and uniform rate structures. SSU was ordered to provide this second set of notices to customers by the Commission at the urging of OPC.¹⁹

21. The supplemental customer notices resulted in numerous inquiries to SSU by customers who were confused by the supplemental customer notice. This customer confusion was confirmed by the

¹⁸The references in the Motion to Dismiss to decisions addressing willful disregard of discovery orders are inapposite. See March 12th Motion to Dismiss, at par. 10. The references to these Orders is somewhat ironic in light of OPC's disregard of a December 20, 1995 Order of the Prehearing Officer requiring OPC to provide discovery responses to SSU. See Order No. PSC-95-1571-PCO-WS. The responses were served by OPC over two months later, on February 26, 1996.

¹⁹Order No. PSC-95-1453-PCO-WS issued November 28, 1995.

testimony of the customers at the second set of customer service hearings.

22. Rather than leave customers confused and "in the dark" regarding the rate increase SSU is requesting in this rate case and the possible rate alternatives depending on the rate structure ultimately ordered by the Commission, SSU elected to educate and inform its customers regarding the possible rate increase scenarios. Incredibly, with the March 12th Motion to Dismiss, OPC and the other Intervenors seek to sanction SSU for its attempts to educate its customers about the ramifications of the different rate structures on potential rate increases.

23. Contrary to the allegations in the Motion to Dismiss, SSU representatives did not state that they already knew how much additional revenue the Commission would grant SSU in this proceeding nor that the Commission "routinely" grants 70% of SSU's request.²⁰ OPC knows or should know that no such statements were made as OPC has deposed SSU employee Ida Roberts who conducted the meetings at issue yet judiciously avoided asking Mr. Roberts any questions regarding statements made or information provided at the meetings. This leaves one to question whether OPC is truly searching for the truth regarding what actually transpired at these meetings.

24. SSU has the constitutional right to communicate its views on substantive issues with its customers without interference from or granting an opportunity to respond to OPC. Pacific Gas and

²⁰March 12, 1996 Motion to Dismiss, at par. 17.

Electric Company v. Public Utilities Commission of California, 475 U.S. 1, 89 L.Ed. 2d 1, 106 S.Ct. 903 (1986); In the Matter of AN INVESTIGATION OF THE SOURCES OF SUPPLY AND FUTURE DEMAND OF KENTUCKY-AMERICAN WATER COMPANY, Case No. 93-434, Kentucky Public Service Commission, order issued March 3, 1995. See Exhibit G. Accordingly, the movants' allegations that SSU's customer meetings and so-called "one sided" discussion of uniform rates vs. stand-alone rates were improper and form the basis for dismissal are baseless.

25. SSU also feels compelled to request that the Commission review the transcripts of the many customer service hearings in this proceeding. A review of those transcripts will confirm that OPC did its best to create the confusion that it now wishes to hold SSU accountable for.

Alleged Interference with the Citizens' Right to Counsel

26. Again, there is no legal authority supporting dismissal of this rate case based on an alleged interference with the citizens' right to counsel, and no such authority is cited by the movants. In any event, based on the legal precedent cited in paragraph 23 above, SSU has not interfered with the citizens' right to counsel.

27. Again, SSU denies advising its customers "... that the amount of increased revenue the utility would receive from customers was a foregone conclusion."²¹

²¹March 12, 1996 Motion to Dismiss, at par. 20.

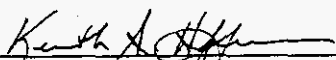
28. OPC also complains that SSU advised customers that OPC had a conflict in representing customers on the rate structure issue. Of course, this is precisely what OPC has stated at customer service hearings and in their Motion to Appoint separate counsel for customers supporting different rate structures. When OPC makes these statements, they are couched in the context of an attorney who is faced with a legitimate (and historic) conflict of interest -- a notion with which SSU concurs. When SSU makes the same statements, they are characterized by OPC as "outrageous interference with the representation of customers by the Public Counsel" which "deprives parties of due process in this case and shatters the fairness of the process."²² OPC's lack of credibility is transparent.

29. In sum, there is no factual or legal basis to dismiss SSU's Amended Application for Increased Water and Wastewater Rates based on an alleged "interference" with the supplemental notice to customers nor an alleged interference with the citizens' right to counsel.

²²Id., at par. 21.

WHEREFORE, for the foregoing reasons, SSU respectfully requests that the Commission deny the March 12, 1996 Motion to Dismiss and accompanying Request for an Evidentiary Hearing.

Respectfully submitted,



KENNETH A. HOFFMAN, ESQ.
WILLIAM B. WILLINGHAM, ESQ.
Rutledge, Ecenia, Underwood,
Purnell & Hoffman, P.A.
P. O. Box 551
Tallahassee, FL 32302-0551
(904) 681-6788

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 SSU's Response in Opposition to March 12th Motion to Dismiss and Request for Evidentiary Hearing was furnished by U. S. Mail to the following on this 19th day of March, 1996:

Lila Jaber, Esq.
Division of Legal Services
2540 Shumard Oak Boulevard
Gerald L. Gunter Building
Room 370
Tallahassee, FL 32399-0850

Mr. John D. Mayles
President
Sugarmill Woods Civic Asso.
91 Cypress Blvd., West
Homosassa, FL 34446

Charles J. Beck, Esq.
Office of Public Counsel
111 W. Madison Street
Room 812
Tallahassee, FL 32399-1400

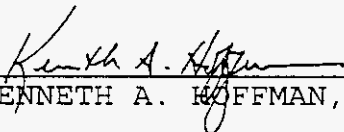
Arthur I. Jacobs, Esq.
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32305-1110

Michael B. Twomey, Esq.
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Tallahassee, FL 32314-5256

Mr. Frank Kane
1208 E. Third Street
Lehigh Acres, FL 33936

Mr. Kjell Pettersen
P. O. Box 712
Marco Island, FL 33969

Mr. Paul Mauer, President
Harbour Woods Civic Association
11364 Woodsong Loop N
Jacksonville, FL 32225



KENNETH A. HOFFMAN, ESQ.

1995/mdismiss

State of Flor.



Public Service Commission

-M-E-M-O-R-A-N-D-U-M-

DATE: December 28, 1995

TO: Blanca Bayó, Director of Records and Reporting

FROM: Susan F. Clark, Chairman *SFC*

RE: Communication from Lieutenant Governor Buddy MacKay regarding Docket Nos. 920199-WS, 930880-WS and 950495-WS

Please find attached a copy of a letter of December 21, 1995, from Lieutenant Governor Buddy MacKay. Attached to the Lieutenant Governor's letter is a letter from Mr. Arend Sandbulte, Chairman and CEO of Minnesota Power. Because these letters address matters relevant to a pending proceeding, it is necessary to place this memorandum and attachment on the record of the above-referenced proceeding pursuant to section 350.042, Florida Statutes. Please give notice of this communication to all parties to the docket and inform them that they have 10 days from receipt of the notice to file a response.

Attachment

Exhibit A

8729



OFFICE OF THE LIEUTENANT GOVERNOR

December 21, 1995

Ms. Susan F. Clark, Chair
Public Service Commission
Gunther Building
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0855

Dear Commissioner Clark:

I have had several discussions recently on the direction of the state's water with the president of Southern State Utilities. They are very interested in being part of the dialogue we are having to protect and preserve one of our most valuable resources.

Although they are not a large player in the overall water management policy discussions presently underway through various legislative and executive office forums, as the state's largest private water utility they play a valuable role in preserving the quality of Florida's water by purchasing and upgrading small, often rural, failed water and wastewater systems.

In addition, I have received a copy of a letter sent to Governor Chiles by Mr. Arend Sandbulte, chairman and CEO of Minnesota Power, that details the current economic impact of recent Public Service Commission decisions on Southern States Utilities.

Mr. Sandbulte, who has joined the Florida Council of 100, because of his interest in supporting our efforts to generate a positive economic development and jobs climate in Florida for businesses and citizens, is very concerned about the regulatory environment at the PSC -- which over the last year have resulted in a year-to-date loss of \$453,749 and reduced the utilities rate of return on investment to -43 percent.

I realize that your rate making decisions are very complicated and our office would not question those detailed, case specific decisions. However, I would be very concerned if we were to place in serious financial jeopardy a unique private water utility that is providing quality water and wastewater treatment facilities throughout the state.

I would appreciate any information you might be able to provide me on the overall economic and financial consequences facing SSU as outlined in the attached letter so I can respond to Mr. Sandbulte's concerns.

Sincerely,

Buddy MacKay

RECEIVED

DEC 21 1995

Florida Public Service Comm.
Commissioner Clark

KHM/kcr

attachment

2002
Lida Roberts



Minnesota power / 30 west superior street / duluth, minnesota 55802-2093 / telephone 218-722-2641

Arvid J. Sandbulte - chairman and chief executive officer

November 21, 1995

The Honorable Lawton Chiles
Governor, State of Florida
The Capitol
Tallahassee, Florida 32399-0001

Dear Governor Chiles:

I appreciated the chance to see and hear you and Lt. Gov. McKay at the recent Florida Council of 100 meeting at The Breakers. Jim Apthorp originally sponsored my membership in this group so that my company could be represented and participate in activities to help Florida achieve its goals. As an out-of-state member of the Council, I appreciate your interest in public-private partnerships and creating win-win situations for the betterment of Florida and its stakeholders. The topic chosen for the Council of 100 meeting, water resources, was of particular interest to me.

Minnesota Power (MP) is a major stakeholder in Florida through ownership since 1984 of Southern States Utilities (SSU) of Apopka which, with about 150 plants stretching from The Panhandle to Collier County, is the largest investor-owned water and wastewater utility in Florida and follows only the municipal systems of Miami and Jacksonville in overall size. We also own 80 percent of Lehigh Acquisition Corporation, which is in the real estate sales business at Lehigh Acres (near Fort Myers) and Sugar Mill Woods, located north of Tampa. Our Florida utility and real estate assets total some \$408 million, not the largest corporate investor in the state, but by no means the smallest. About 21 percent of Minnesota Power's corporate assets are located in Florida, and we'd like to grow that percentage. Our investment strategy -- earning fair and reasonable profits in Florida -- is based on a vibrant marketplace, with respect to real estate, and based on fair regulatory treatment from the Florida Public Service Commission (FPSC). With respect to the latter, we have a serious problem. Please allow me to explain.

SSU is a vital partner with the State of Florida, the Department of Environmental Protection (DEP) in particular, in not only providing safe drinking water to the company's water customers, but in protecting the state's precious water resources and aquifer through proper wastewater treatment and re-use of reclaimed water. The latter has been and is being accomplished through special reclaimed water projects, aquifer storage and recovery wells, and award-winning conservation programs and, in some instances, by taking over failing systems at the request of Florida regulators and bringing them into compliance because there was no adjacent or willing municipality ready to perform that state purpose.

ALWAYS AT YOUR SERVICE

8731

minnesota power

Governor Chiles
November 21, 1995
Page 2

Recently the Florida Public Service Commission reversed a 1993 decision in which they had approved additional revenues for SSU of \$6.7 million to be collected under uniform water and wastewater rates for SSU's customers, a practice used by the majority of states which have considered the issue and by many Florida counties, and one which the Commission long has followed for electric and telephone company customers. The 1993 uniform rate decision was reaffirmed after a year's worth of statewide hearings considering conservation, aquifer protection, centralized SSU services and the affordability issues of "rate shock," which occurs when large capital expenditures are required for environmental reasons on plants with a small number of customers. That is why the Commission's recent order which would require Southern States to revert to so-called "stand-alone" rates is so disconcerting.

One group of customers (whose water usage, by the way, is significantly higher than the state's average usage and whose rates were higher on a uniform versus stand-alone basis) appealed the 1993 decision. The recent FPSC reversal was in response to an order issued by the First District Court of Appeals on that appeal. The appellate court said that the FPSC needed to make a specific legal finding that SSU's operations were "functionally-related" before ordering a uniform rate structure. That finding was made by the FPSC in June 1995 following another year-long proceeding.

However, when the mandate came down from the courts, the FPSC decided not to reopen the original case and incorporate the "functionally-related" finding, stating they were declining to do so "as a matter of policy," without any further explanation. They then proceeded to order retroactive "stand-alone rates" (which could raise water and wastewater bills for many retirees to over \$100 a month), ordered SSU to make refunds of \$8 million to customers of a small number of plants, and said we could not collect any underpaid amounts from other customers resulting from a rate structure the Commission ordered us to institute in 1993.

The impact of this decision on SSU is staggering. If it stands, the financial result will be devastating on SSU's ability to attract financing and continue to make investments in Florida's future. The Commission awarded SSU \$6.7 million in additional revenue in 1993, and now they are asking that \$8 million be refunded. This will create mass confusion and severe financial ramifications with our customers. Monthly bills for homeowners in nearly 100 communities throughout the state will increase, some by as much as 300 percent. And the rates of the high-use water customers who appealed will drop even further, encouraging less conservation concern than ever among these high-use customers.

minnesota power

Governor Chiles
November 21, 1995
Page 3

Governor, I don't believe we are whiners. If you believe we're at fault somehow, I hope you'll tell us what we've done wrong so that we have a chance to consider doing things differently. We want to do the right things and do those things right. If you have any questions about our corporate citizenship record, I invite you to talk to Arne Carlson, Governor of Minnesota. I'm sure he'll tell you Minnesota Power is one of the top corporate citizens in the State of Minnesota, from the multi-faceted standard of dedication to economic development, to outstanding service to utility customers and honesty and integrity in all our business activities.

The FPSC actions of late require us to pursue fair treatment through asking the Commission to reconsider its decisions which affect us so negatively or, if necessary, through the courts. Court action may engender negative publicity for MP; however, we have no choice but to seek fair treatment. We'll not be driven from Florida without a fight, a fight thrust on us by an inconsistent and problematical FPSC decision-making process and record.

We want to help solve Florida's water-related issues, but we can't do so when FPSC decisions create for us violations of loan covenants with our lenders. With the loss of income this FPSC order would produce, our coverage ratio would be well below the minimum required by the loan documents. We simply cannot continue putting \$20 million or more annually into water utility investments, most of it to meet environmental and customer-needs demands, unless we can make a reasonable profit. We certainly can't do so if we are in default with our lenders! This is not a rocket-science issue, but rather one of simple equity and fairness. The public-private partnership is just not working, and it needs to be fixed!

We will continue our efforts to get fair treatment from the FPSC directly or, if it's not forthcoming from them, through the courts. Any advice, guidance, counsel or constructive criticism you can offer to normalize the current unfortunate situation will be appreciated and seriously considered. We are willing to meet anytime, anyplace, with anyone for that purpose.

I hope to hear from you soon.

Sincerely,


Arend Sandbulte

mjk

copy: Lt. Gov. Buddy McKay

cc: Ed Russell; Jim Roberts; John Cirello; Brian Armstrong; Ida Roberts

State of Florida



Public Service Commission

-M-E-M-O-R-A-N-D-U-M-

DATE: January 3, 1996

TO: Blanca Bayó, Director of Records and Reporting

FROM: Susan F. Clark, Chairman *WJL for SEC*

RE: Communication from Secretary of Commerce Charles Dusseau regarding Docket Nos. 920199-WS, 930880-WS and 950495-WS

Please find attached a copy of a letter of January 2, 1996, from Secretary of Commerce Charles Dusseau. Because this letter addresses matters relevant to pending proceedings, it is necessary to place this memorandum and attachment on the records of the above-referenced proceedings pursuant to section 350.042, Florida Statutes. Please give notice of this communication to all parties to the dockets and inform them that they have 10 days from receipt of the notice to file a response.

Attachment

Exhibit B

8734



FLORIDA DEPARTMENT OF COMMERCE
Secretary Charles Dusseau

GOVERNOR
Lawton Chiles

Office of the
Secretary
(904) 488-3104
Fax (904) 922-9150

Economic
Development
(904) 488-6300
Fax (904) 922-9595

International Trade
and Development
(904) 488-6174
Fax (904) 487-1407

Tourism
(904) 922-8987
Fax (904) 922-9329

Administrative
Services
(904) 488-9377
Fax (904) 922-2174

January 2, 1996

Susan F. Clark, Chairperson
Florida Public Service Commission
Gunther Building
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0855

Dear Commissioner Clark:

I recently received a copy of a letter sent to Governor Chiles by Mr. Arend Sandbulte, Chairman and CEO of Minnesota Power in Duluth, Minnesota. As you are aware, Minnesota Power owns Southern States Utilities, a water and wastewater utility company based in Apopka. This letter outlined his corporation's concerns regarding the PSC's recent uniform rate ruling pertaining to Southern States Utilities (PSC-95-1292-FOF-WS).

Businesses frequently contact this Department with concerns about regulatory decisions, and the PSC under your leadership has been very supportive of our efforts to ensure a fair and favorable setting for economic development in Florida. Your recent cooperation on the economic development expenditures issue and the telephone area code issue are good examples. However, as you can imagine, one of the basic elements for business survival in any marketplace is a predictable and stable business climate. Without it, business managers are unable to make informed decisions which can often make the difference between business survival and failure. An unpredictable environment, even in a regulated setting, can put tremendous financial pressure on firms such as SSU, which may lead them to rethink their investment in Florida and could cause businesses considering Florida as a site for expansion to go elsewhere.

In this case, I have asked a member of our staff, Nick Leslie, to consult with your staff and with the Water Policy Office in the Department of Environmental Protections. Nick will advise me on the reasoning behind the Commission's order and on what, if any, recourse might be available to Southern States Utilities. Nick can be reached at 487-2568.

FLORIDA

Collins Building
107 West Gaines Street
Tallahassee, Florida 32399-2000

Susan F. Clark, Chairperson
January 2, 1996
Page Two

As always, I appreciate the cooperation of the Commission and thank you for your attention to this issue.

Sincerely,

A handwritten signature in cursive script that reads "Charles Dusseau".

Charles Dusseau
Secretary of Commerce

CD:ss

cc: Governor Lawton Chiles
Jeff Sharkey

Commissioners
SUSAN F. CLARK, CHAIRMAN
J. TERRY DEASON
JULIA L. JOHNSON
DIANE K. KIESLING
JOE GARCIA

State of Florida



Blanca S. Bayó, Director
Division of Records and Reporting
(904) 413-6770

Public Service Commission

DATE: January 4, 1996

TO: Parties of Record

FROM: Blanca S. Bayó, Director, Division of Records and Reporting BSB/ky

RE: DOCKET NO. 920199-WS - Application for rate increase in Brevard, Charlotte/Lee, Citrus, Clay, Duval, Highlands, Lake, Marion, Martin, Nassau, Orange, Osceola, Pasco, Putnam, Seminole, Volusia, and Washington Counties by Southern States Utilities, Inc., Collier County by Marco Shores Utilities; Hernando County by Spring Hill Utilities; and Volusia County by Deltona Lakes Utilities.
DOCKET NO. 930880-WS - Investigation into appropriate rate structure for Southern States for all regulated systems in Bradford, Brevard, Citrus, Clay, Collier, Duval, Hernando, Highlands, Lake, Lee/Charlotte, Marion, Martin, Nassau, Orange, Osceola, Pasco, Putnam, Seminole, St. Johns, St. Lucie, Volusia, and Washington Counties.
DOCKET NO. 950495-WS - Application for rate increase and increase in service availability charges by Southern States for Orange-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.

This is to inform you that Chairman Clark has reported the following communications in the above referenced dockets.

- Letter from Lieutenant Governor Buddy MacKay dated December 21, 1995. Attached is a letter from Mr. Arend Sandbult, Chairman and CEO of Minnesota Power.
- Letter from Secretary of Commerce Charles Dusseau dated January 2, 1996.

These letters, copies of which are attached, are being made a part of the record in these proceedings. Pursuant to Section 350.042, F.S., any party who desires to respond to an ex parte communication may do so. The response must be received by the Commission within 10 days after receiving notice that the ex parte communication has been placed on the record.

BSB/cp
Attachments
cc: Rob Vandiver/w/letter

Exhibit C



OFFICE OF THE LIEUTENANT GOVERNOR

December 21, 1995

Ms. Susan F. Clark, Chair
Public Service Commission
Gunther Building
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0855

Dear Commissioner Clark:

I have had several discussions recently on the direction of the state's water with the president of Southern State Utilities. They are very interested in being part of the dialogue we are having to protect and preserve one of our most valuable resources.

Although they are not a large player in the overall water management policy discussions presently underway through various legislative and executive office forums, as the state's largest private water utility they play a valuable role in preserving the quality of Florida's water by purchasing and upgrading small, often rural, failed water and wastewater systems.

In addition, I have received a copy of a letter sent to Governor Chiles by Mr. Arend Sandbulte, chairman and CEO of Minnesota Power, that details the current economic impact of recent Public Service Commission decisions on Southern States Utilities.

Mr. Sandbulte, who has joined the Florida Council of 100, because of his interest in supporting our efforts to generate a positive economic development and jobs climate in Florida for businesses and citizens, is very concerned about the regulatory environment at the PSC -- which over the last year have resulted in a year-to-date loss of \$453,749 and reduced the utilities rate of return on investment to -.43 percent.

I realize that your rate making decisions are very complicated and our office would not question those detailed, case specific decisions. However, I would be very concerned if we were to place in serious financial jeopardy a unique private water utility that is providing quality water and wastewater treatment facilities throughout the state.

I would appreciate any information you might be able to provide me on the overall economic and financial consequences facing SSU as outlined in the attached letter so I can respond to Mr. Sandbulte's concerns.

Sincerely,

Buddy MacKay

RECEIVED

DEC 21 1995

Florida Public Service Comm.
Commissioner Clark

KHM/kcr

attachment

THE CAPITOL
TALLAHASSEE, FLORIDA 32399-0001

A RECYCLED PAPER PRODUCT PRINTED WITH SOY INK

8738

Lida Roberts



minnesota power / 30 west superior street / duluth, minnesota 55802-2093 / telephone 218-722-2541

Arvid J. Sandbulte - chairman and chief executive officer

November 21, 1995

The Honorable Lawton Chiles
Governor, State of Florida
The Capitol
Tallahassee, Florida 32399-0001

Dear Governor Chiles:

I appreciated the chance to see and hear you and Lt. Gov. McKay at the recent Florida Council of 100 meeting at The Breakers. Jim Apthorp originally sponsored my membership in this group so that my company could be represented and participate in activities to help Florida achieve its goals. As an out-of-state member of the Council, I appreciate your interest in public-private partnerships and creating win-win situations for the betterment of Florida and its stakeholders. The topic chosen for the Council of 100 meeting, water resources, was of particular interest to me.

Minnesota Power (MP) is a major stakeholder in Florida through ownership since 1984 of Southern States Utilities (SSU) of Apopka which, with about 150 plants stretching from The Panhandle to Collier County, is the largest investor-owned water and wastewater utility in Florida and follows only the municipal systems of Miami and Jacksonville in overall size. We also own 80 percent of Lehigh Acquisition Corporation, which is in the real estate sales business at Lehigh Acres (near Fort Myers) and Sugar Mill Woods, located north of Tampa. Our Florida utility and real estate assets total some \$408 million, not the largest corporate investor in the state, but by no means the smallest. About 21 percent of Minnesota Power's corporate assets are located in Florida, and we'd like to grow that percentage. Our investment strategy -- earning fair and reasonable profits in Florida -- is based on a vibrant marketplace, with respect to real estate, and based on fair regulatory treatment from the Florida Public Service Commission (FPSC). With respect to the latter, we have a serious problem. Please allow me to explain.

SSU is a vital partner with the State of Florida, the Department of Environmental Protection (DEP) in particular, in not only providing safe drinking water to the company's water customers, but in protecting the state's precious water resources and aquifer through proper wastewater treatment and re-use of reclaimed water. The latter has been and is being accomplished through special reclaimed water projects, aquifer storage and recovery wells, and award-winning conservation programs and, in some instances, by taking over failing systems at the request of Florida regulators and bringing them into compliance because there was no adjacent or willing municipality ready to perform that state purpose.

ALWAYS AT YOUR SERVICE

8739

minnesota power

Governor Chiles
November 21, 1995
Page 2

Recently the Florida Public Service Commission reversed a 1993 decision in which they had approved additional revenues for SSU of \$6.7 million to be collected under uniform water and wastewater rates for SSU's customers, a practice used by the majority of states which have considered the issue and by many Florida counties, and one which the Commission long has followed for electric and telephone company customers. The 1993 uniform rate decision was reaffirmed after a year's worth of statewide hearings considering conservation, aquifer protection, centralized SSU services and the affordability issues of "rate shock," which occurs when large capital expenditures are required for environmental reasons on plants with a small number of customers. That is why the Commission's recent order which would require Southern States to revert to so-called "stand-alone" rates is so disconcerting.

One group of customers (whose water usage, by the way, is significantly higher than the state's average usage and whose rates were higher on a uniform versus stand-alone basis) appealed the 1993 decision. The recent FPSC reversal was in response to an order issued by the First District Court of Appeals on that appeal. The appellate court said that the FPSC needed to make a specific legal finding that SSU's operations were "functionally-related" before ordering a uniform rate structure. That finding was made by the FPSC in June 1995 following another year-long proceeding.

However, when the mandate came down from the courts, the FPSC decided not to reopen the original case and incorporate the "functionally-related" finding, stating they were declining to do so "as a matter of policy," without any further explanation. They then proceeded to order retroactive "stand-alone rates" (which could raise water and wastewater bills for many retirees to over \$100 a month), ordered SSU to make refunds of \$8 million to customers of a small number of plants, and said we could not collect any underpaid amounts from other customers resulting from a rate structure the Commission ordered us to institute in 1993.

The impact of this decision on SSU is staggering. If it stands, the financial result will be devastating on SSU's ability to attract financing and continue to make investments in Florida's future. The Commission awarded SSU \$6.7 million in additional revenue in 1993, and now they are asking that \$8 million be refunded. This will create mass confusion and severe financial ramifications with our customers. Monthly bills for homeowners in nearly 100 communities throughout the state will increase, some by as much as 300 percent. And the rates of the high-use water customers who appealed will drop even further, encouraging less conservation concern than ever among these high-use customers.

minnesota power

Governor Chiles
November 21, 1995
Page 3

Governor, I don't believe we are whiners. If you believe we're at fault somehow, I hope you'll tell us what we've done wrong so that we have a chance to consider doing things differently. We want to do the right things and do those things right. If you have any questions about our corporate citizenship record, I invite you to talk to Arne Carlson, Governor of Minnesota. I'm sure he'll tell you Minnesota Power is one of the top corporate citizens in the State of Minnesota, from the multi-faceted standard of dedication to economic development, to outstanding service to utility customers and honesty and integrity in all our business activities.

The FPSC actions of late require us to pursue fair treatment through asking the Commission to reconsider its decisions which affect us so negatively or, if necessary, through the courts. Court action may engender negative publicity for MP; however, we have no choice but to seek fair treatment. We'll not be driven from Florida without a fight, a fight thrust on us by an inconsistent and problematical FPSC decision-making process and record.

We want to help solve Florida's water-related issues, but we can't do so when FPSC decisions create for us violations of loan covenants with our lenders. With the loss of income this FPSC order would produce, our coverage ratio would be well below the minimum required by the loan documents. We simply cannot continue putting \$20 million or more annually into water utility investments, most of it to meet environmental and customer-needs demands, unless we can make a reasonable profit. We certainly can't do so if we are in default with our lenders! This is not a rocket-science issue, but rather one of simple equity and fairness. The public-private partnership is just not working, and it needs to be fixed!

We will continue our efforts to get fair treatment from the FPSC directly or, if it's not forthcoming from them, through the courts. Any advice, guidance, counsel or constructive criticism you can offer to normalize the current unfortunate situation will be appreciated and seriously considered. We are willing to meet anytime, anyplace, with anyone for that purpose.

I hope to hear from you soon.

Sincerely,


Arend Sandbulte

mjk

copy: Lt. Gov. Buddy McKay

cc: Ed Russell; Jim Roberts; John Cirello; Brian Armstrong; Ida Roberts



FLORIDA DEPARTMENT OF COMMERCE
Secretary of Commerce

GOVERNOR
Lawton Chiles

Office of the
Secretary
(904) 488-3104
Fax: (904) 922-9150

Economic
Development
(904) 488-6300
Fax: (904) 922-9595

International Trade
and Development
(904) 488-6174
Fax: (904) 487-1407

Tourism
(904) 922-8887
Fax: (904) 922-9329

Administrative
Services
(904) 488-9377
Fax: (904) 922-2174

January 2, 1996

Susan F. Clark, Chairperson
Florida Public Service Commission
Gunther Building
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0855

Dear Commissioner Clark:

I recently received a copy of a letter sent to Governor Chiles by Mr. Arend Sandbulte, Chairman and CEO of Minnesota Power in Duluth, Minnesota. As you are aware, Minnesota Power owns Southern States Utilities, a water and wastewater utility company based in Apopka. This letter outlined his corporation's concerns regarding the PSC's recent uniform rate ruling pertaining to Southern States Utilities (PSC-95-1292-FOF-WS).

Businesses frequently contact this Department with concerns about regulatory decisions, and the PSC under your leadership has been very supportive of our efforts to ensure a fair and favorable setting for economic development in Florida. Your recent cooperation on the economic development expenditures issue and the telephone area code issue are good examples. However, as you can imagine, one of the basic elements for business survival in any marketplace is a predictable and stable business climate. Without it, business managers are unable to make informed decisions which can often make the difference between business survival and failure. An unpredictable environment, even in a regulated setting, can put tremendous financial pressure on firms such as SSU, which may lead them to rethink their investment in Florida and could cause businesses considering Florida as a site for expansion to go elsewhere.

In this case, I have asked a member of our staff, Nick Leslie, to consult with your staff and with the Water Policy Office in the Department of Environmental Protections. Nick will advise me on the reasoning behind the Commission's order and on what, if any, recourse might be available to Southern States Utilities. Nick can be reached at 487-2568.

Collins Building
107 West Gaines Street
Tallahassee, Florida 32399-2000

FLORIDA

Susan F. Clark, Chairperson
January 2, 1996
Page Two

As always, I appreciate the cooperation of the Commission and thank you for your attention to this issue.

Sincerely,

A handwritten signature in cursive script that reads "Charles Dusseau".

Charles Dusseau
Secretary of Commerce

CD:ss

cc: Governor Lawton Chiles
Jeff Sharkey

State of Florida



Public Service Commission

-M-E-M-O-R-A-N-D-U-M-

DATE: January 5, 1996

TO: Blanca Bayó, Director of Records and Reporting

FROM: Susan F. Clark, Chairman *WAS for SEC*

RE: Letter in Response to Communication from Lieutenant Governor Buddy MacKay regarding Docket Nos. 920199-WS, 930880-WS and 950495-WS

Please find attached a copy of my letter in response to a letter of December 21, 1995, from Lieutenant Governor Buddy MacKay. Because this letter responds to a communication from the Lieutenant Governor which addressed matters relevant to a pending proceeding, it is necessary to place this memorandum and attachment on the record of the above-referenced proceeding pursuant to section 350.042, Florida Statutes. Please give notice of this communication to all parties to the docket and inform them that they have 10 days from receipt of the notice to file a response.

Attachment

Exhibit D

8744

State of Florida

Susan F. Clark
Chairman



Gerald L. Gunter Building
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850
(904) 413-6040
FAX (904) 487-1716

Public Service Commission

January 5, 1996

The Honorable Buddy MacKay
Lieutenant Governor
State of Florida
The Capitol
Tallahassee, Florida 32399-0001

Dear Governor MacKay:

Thank you for your letter of December 21, 1995, regarding Southern States Utilities, Inc. (SSU).

As you pointed out in your letter, the Commission's ratemaking decisions are complicated and case-specific determinations. The Commission's decisions regarding SSU's rates have been arrived at after careful consideration of testimony and evidence presented in public hearings. At the present time, SSU has an application for rate increase pending before the Commission. Also, the Commission's decisions in three other pivotal cases involving SSU are either pending reconsideration by the Commission or are on appeal in the First District Court of Appeal.

Due to the fact that many cases involving SSU are pending before the Commission, I am unable to make any statements about the matters raised in Mr. Arend Sandbulte's letter to the Governor. However, I have instructed Mr. Rob Vandiver, the Commission's General Counsel, to work with your office to the extent necessary for you to understand this Agency's proceedings and its decisions affecting SSU. In fact, Mr. Vandiver met yesterday with Mr. Nels Roseland of your office and Mr. Nick Leslie of the Department of Commerce. Our staff will continue to be available to your office in this capacity.

Sincerely,

A handwritten signature in cursive script that reads "Susan F. Clark".

Susan F. Clark
Chairman

c: Rob Vandiver

8745

State of Florida



Public Service Commission

-M-E-M-O-R-A-N-D-U-M-

DATE: January 11, 1996

TO: Blanca Bayó, Director of Records and Reporting

FROM: Susan F. Clark, Chairman *SFC*

RE: Letter in Response to letter from Secretary of Commerce Charles Dusseau regarding Docket Nos. 920199-WS, 930880-WS and 950495-WS

Please find attached a copy of my letter in response to a letter of January 2, 1996, from Secretary of Commerce Charles Dusseau. Because this letter is a response to a letter which addresses matters relevant to pending proceedings, it is necessary to place this memorandum and attachment on the records of the above-referenced proceedings pursuant to section 350.042, Florida Statutes. Please give notice of this communication to all parties to the dockets and inform them that they have 10 days from receipt of the notice to file a response.

Attachment

Exhibit E

8746

State of Florida

Susan F. Clark
Chairman



Gerald L. Gunter Building
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850
(904) 413-6040
FAX (904) 487-1716

Public Service Commission

January 11, 1996

The Honorable Charles Dusseau
Secretary
Florida Department of Commerce
Collins Building
107 West Gaines Street
Tallahassee, Florida 32399-0001

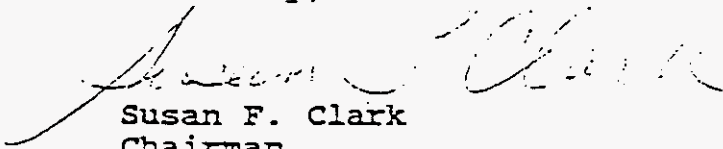
Dear Secretary Dusseau:

Thank you for your letter of January 2, 1996, regarding Southern States Utilities, Inc. (SSU).

The Commission's decisions regarding SSU's rates have been arrived at after careful consideration of testimony and evidence presented in public hearings. At the present time, SSU has an application for rate increase pending before the Commission. Also, the Commission's decisions in three other pivotal cases involving SSU are either pending reconsideration by the Commission or are on appeal in the First District Court of Appeal.

Due to the fact that many cases involving SSU are pending before the Commission, I am unable to make any statements about the matters raised in your letter. However, I have instructed Mr. Rob Vandiver, the Commission's General Counsel, to work with your office to the extent necessary for you to understand this Agency's proceedings and its decisions affecting SSU. In fact, Mr. Vandiver met on January 4th with Mr. Nels Roseland of the Governor's Office and Mr. Nick Leslie of your office. Our staff will continue to be available to your office in this capacity.

Sincerely,


Susan F. Clark
Chairman

c: Rob Vandiver

8747

10 22

MICHAEL B. TWOMEY

Attorney At Law
P.O. Box 5256
Tallahassee, Florida 32314-5256
Tel. (904) 421-9530 • Fax (904) 421-8543

January 16, 1996

Blanca S. Bayo
Director
Division of Records & Reporting
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, Florida 32399-1400

Re: Docket Nos. 920199-WS, 930880-WS and 950495-WS and Ex Parte
Communication from Lt. Gov. Buddy MacKay

Dear Ms. Bayo:

The attached letter to the Lt. Gov. is my response to his ex parte communication to the Commissioners "inquiring" about Southern States Utilities, Inc. Please place it in the files of these dockets.

I am not immediately going to serve the other parties of these dockets with this response. Should I? What is the Commission's practice with respect to serving parties and other interested persons on a docket's mailing list with these type communications? I will give you a call later to ask.

Thank you for your assistance.

Sincerely,


Michael B. Twomey

Exhibit F

MAIL ROOM
1996 JAN 22 AM 10:13

RECEIVED
FLORIDA PUBLIC SERVICE COMMISSION
DOCUMENT NUMBER 8748
00766 JAN 22 1996

FPSC-RECORDS/REPORTING

MICHAEL B. TWOMEY

Attorney At Law
P.O. Box 5256
Tallahassee, Florida 32314-5256
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January 3, 1996

The Honorable Buddy MacKay
Lieutenant Governor, State of Florida
The Capitol
Tallahassee, Florida 32399-0001

Dear Lieutenant Governor MacKay:

I am an attorney representing five civic associations and over 45,000 households in four active dockets involving Southern States Utilities, Inc. ("SSU") at the Florida Public Service Commission ("PSC"). Yesterday I received a copy of your December 21, 1995 letter to Susan Clark, Chairman of the PSC, stating that you had recent discussions with SSU's President, and that you had received a copy of a letter to Governor Chiles from the CEO of SSU's parent corporation, Minnesota-based Minnesota Power, now a member of the Florida Council of 100, complaining about the economic impact of PSC decisions on SSU. You stated to Clark that you "would be very concerned if we were to place in serious financial jeopardy a unique private water utility" that you believe plays a valuable role "by purchasing and upgrading small, often rural, failed water and wastewater systems" and requested information from the PSC addressing the concerns outlined by Minnesota Power CEO Sandbulte in his sniveling and grossly misleading four-page letter, which you forwarded to Clark.

Although the PSC is a subordinate agency of the legislature, Governor Chiles has appointed or reappointed all five commissioners. If you should succeed the Governor, you will be in the position of reappointing these individuals or axing them if you find them wanting for any reason. I am convinced that you are well-intended in your purpose, but that you have been misled by Minnesota Power, SSU and their lobbyists with close ties to the Executive Office. Irrespective of your motive, I find your communication to Commissioner Clark to be an unprecedented, unwarranted and outrageous intrusion in the administrative hearing process of this state. That it has been timed to improperly pressure the PSC at a critical juncture in several cases before them makes your communication even more objectionable. That Secretary Dusseau of the Florida Department of Commerce has also weighed in lobbying for SSU with impermissible ex parte communications to the PSC makes this entire matter even more questionable. I intend to counter every Arend Sandbulte misstatement to the Governor within the next several days and will copy you. However, let me briefly tell you why I find your actions so objectionable.

That Florida has "failed water systems" at all is largely due to incompetent developers aided by the complicity of government in luring homeowners to Florida. The PSC has for decades allowed

The Honorable Buddy MacKay

Page 2

January 3, 1996

developers to deceive home purchasers by luring them with exceedingly low, non-compensatory water and sewer rates. The low rates last only until the last lot is sold and then rates are allowed to go through the roof. Additionally, the PSC has historically been negligent in fulfilling its statutory responsibility for setting "fair and reasonable" service availability or CIAC charges. As a consequence, Florida's privately owned water and sewer systems run the gamut from being horribly over-capitalized to having no owner investment, neither of which is acceptable from a regulatory perspective. Regulators, either at the PSC or county level, have also consistently failed to ensure that systems were adequately maintained. The result, admittedly, has been the abandonment of some "trashy" systems. Unfortunately, to date, the PSC and SSU have considered that virtually anyone with a water faucet or central sewer service was fair game for financing the clean-up of these systems. With no perceptible awareness of the constitutional or statutory underpinnings of utility regulation in this country, they have willy-nilly assumed they could dip into the wallets of my clients to correct their own failings and those of vanishing developers. They are wrong. You are wrong, too, if you believe the contents of your letter and the Sandbulte letter. Worse still, you have compounded your error by interfering in pending administrative cases that are supposed to be free of such interference. You have sided with a "carpetbag" Minnesota power company by clearly suggesting that the PSC has harmed SSU by not raising my clients' rates even more than the unconscionable levels already experienced. Lastly, you have interfered on the eve of two critical decisions facing the PSC. Let me give you a few more specifics.

Utility rates are supposed to be based on the "cost of service" to the customers being charged the rates. SSU is a conglomeration of over 150 water and sewer systems spread over the state. The vast majority are not physically interconnected by pipe and, therefore, cannot provide utility service to one another. Most systems were previously owned by others and were only recently acquired by SSU. Some systems were well-maintained and reasonably capitalized, while others were not. My clients in Sugarmill Woods, for example, paid in about \$2,300 per customer in service availability charges or CIAC, which amount is deducted from the utility rate base and, therefore, legally entitles them to lower rates. The PSC did many objectionable things when it imposed the so-called "uniform rates" for SSU in 1993, including failing to properly notice the customers, failing to have competent evidence to support its findings of fact, and failing to follow the law. By ordering uniform or identical rates without any regard for cost of service or CIAC levels, the PSC essentially "stole" the CIAC of my clients and transferred it to others. Widows and other of my retired clients living on fixed incomes in Sugarmill Woods were forced to pay subsidies of \$300 a year to support the \$4,000 a year rate subsidies received by industrial and commercial customers at SSU's South Forty system. Likewise, clients of mine living in \$45,000 homes were forced to subsidize the utility rates of people living in \$250,000 homes served by other SSU systems. In all, forced subsidies exceeded \$4 million annually as a result of the 1993 case.

The uniform rates charged by SSU were a straight mathematical average that didn't consider either the "ability to pay" when compelling the payment of subsidies or the "need" for subsidies

The Honorable Buddy MacKay

Page 3

January 3, 1996

when dispensing them. Importantly, to anyone that understands regulatory law and the constitutions, "ability to pay" and "need" are not factors that can constitutionally be considered. Likewise, while you may think SSU buying trashy systems has value to the state, neither you, the PSC, nor the legislature can do it with my clients' utility rates. Do it with General Revenue if you think it is so important and if you can justify bailing out incompetent developers and regulators to the electorate. Doing it through uniform rates is not a constitutional option. Uniform rates are "regulatory socialism" pure and simple and I don't think you want to tie your political star to them.

After a two-year David and Goliath fight against both the PSC and SSU, my clients and I, at great expense to them, succeeded in having the uniform rate decision reversed at the First District Court of Appeal and then pushed a foot-dragging PSC into ordering stand-alone rates and almost \$9 million in refunds to the overcharged customers. Sandbulte and his crew could have chosen to recover almost exactly the same revenues without any risk of refund liability to his shareholders in 1993, but arrogantly choose to gamble by abusing my clients. During the pendency of our appeal, Sandbulte failed to make his shareholders aware of the refund contingent liability and is now faced with making refunds at a time when he desperately needs cash to pay dividends. He has come to you and the Governor for help. You should ignore him and concentrate on the needs of your constituents. In any event, you should stay out of the administrative law process unless you clearly and publicly officially intervene on SSU's side in these matters.

Despite Sandbulte's assertions to the contrary, the PSC had no choice but to order the rate changes and refunds in the face of our victory in the courts. The subsequent PSC decision Sandbulte places so much faith in is also on appeal. It is every bit as shoddy as the PSC's first order and I am confident it, too, will be reversed. Sandbulte's statements to the Governor about the widespread acceptance of uniform rates elsewhere are grossly misleading, if not intentionally dishonest. I don't have time to debunk every misleading statement at the moment, but Sandbulte's statements are materially false. The PSC did what was required of it by the First District and, in the process, potentially saved Sandbulte from squandering more of his shareholders' dividends. He should be grateful.

Uniform rates, as now charged by SSU are illegal. Furthermore, they are unconstitutional and cannot be revived by revising the statutes. Ask a competent constitutional attorney and try to avoid a second out-of-state automobile registration type fiasco. I doubt that Sandbulte or Jeff Sharkey informed you of this, but they have talked you into taking the side of this utility in opposition to the overwhelming majority of SSU's customers, who are already outraged at the non-stop rate increases they have experienced at the hands of the PSC and SSU. Your inappropriate intervention here is an ill-conceived tactic for starting a state-wide campaign.

Most importantly, neither you, nor Commerce Secretary Charles Dusseau have any business interceding in these administrative hearing matters, especially at a time when the order requiring rate reductions and refunds is under reconsideration by the PSC and when that agency will vote

The Honorable Buddy MacKay

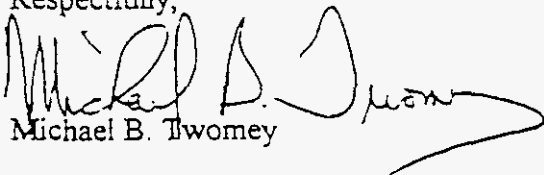
Page 4

January 3, 1996

tomorrow on what level, if any, interim rate increase to grant SSU in its most recent pending rate case. Your communications are inappropriate ex parte communications and have no place in any Section 120.57(1), F.S. proceeding. That you represent the "appointing authority" for PSC commissioners and are, therefore, in a position of bullying their result in these cases makes your interference all the more objectionable.

I plan to subpoena SSU lobbyist Jeff Sharkey to find what role, if any, he played in orchestrating this concerted attack on the PSC at this hour. In the interim, I would respectfully request that you immediately write Susan Clark and retract your letter. I would also ask that you direct Dusseau to withdraw his condescending and presumptuous communication of January 2, 1996, and advise him that he, too, has no legitimate business shilling for SSU against the interest of my clients.

Respectfully,


Michael B. Twomey

Attorney for the Sugarmill Woods Civic Association, Inc.,
Marco Island Civic Association, Inc., the Spring Hill
Civic Association, Inc., the Concerned Citizens of Lehigh Acres, and
the Harbour Woods Civic Association

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

AN INVESTIGATION OF THE SOURCES OF SUPPLY)
AND FUTURE DEMAND OF KENTUCKY-AMERICAN) CASE NO. 93-434
WATER COMPANY)

O R D E R

On January 10, 1995, the Attorney General's office, by and through his Public Service Litigation Branch, ("AG") filed a motion requesting the Commission to compel Kentucky-American Water Company ("Kentucky-American") to include in future billings the AG's response to a Kentucky-American bill insert discussing the need for a pipeline to the Louisville Water Company. The AG claims that Kentucky-American's use of a bill insert was an attempt to influence public opinion on an issue on which the AG has taken a contrary position and since ratepayers have paid for the cost of Kentucky-American's bill inserts, fairness requires the AG be provided an equal opportunity to respond.

Chetan Talwalkar filed a complaint against Kentucky-American alleging that the bill insert discussing the pipeline constitutes political advertising, the cost of which is not recoverable in rates pursuant to 807 KAR 5:016, Section 4. Talwalkar requests the Commission to investigate the propriety of Kentucky-American's pipeline advertising, prohibit any further expenditures for such advertising or require that the expenditures be recorded in a

Exhibit G

separate account pending investigation, and impose punitive measures to discourage similar violations in the future.

The Commission, having considered the motion to compel and the complaint, the responses thereto, and being sufficiently advised, hereby finds that Kentucky-American has an absolute right under the first amendment to the United States Constitution to express its opinions on the pipeline issue to its ratepayers and the public. Further, courts have held that it is a violation of a utility's right to free speech to be compelled to distribute a bill insert expressing views and opinions of others. See Pacific Gas and Electric Company v. Public Utilities Commission of California, 475 U.S. 1, 89 L.Ed.2d 1 (1986).

The Commission agrees that expenditures for advertising to promote the pipeline constitute political advertising that cannot be charged to ratepayers. However, there has been no showing that such expenditures are included in existing rates and the timing of the advertising demonstrates otherwise. The expenditures occurred after Kentucky-American filed its last rate case on June 29, 1994.¹ The AG, Talwalkar and all other parties entered into a stipulation and settlement of that rate case and any advertising not chargeable to ratepayers was presumably considered during their negotiations. However, to ensure that expenditures on political advertising are not included in future rates, Kentucky-American should isolate such

¹ Case No. 94-197, Notice of Adjustment of the Rates of Kentucky-American Water Company.

expenditures so they are readily identifiable should they appear in a subsequent rate case base period or test period.

IT IS THEREFORE ORDERED that:

1. The AG's motion to compel be and it hereby is denied.
2. Talwalkar's complaint be and it hereby is dismissed.
3. Kentucky-American shall keep its books and records in such form that any expenditures for political advertising can be readily identified.

Done at Frankfort, Kentucky, this 3rd day of March, 1995.

ATTEST:

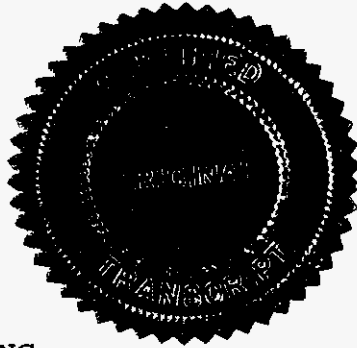


Executive Director

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION
TALLAHASSEE, FLORIDA

IN RE: Application for rate increase and increase in service availability charges by Southern States Utilities, Inc. for Orange-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



BEFORE:

CHAIRMAN SUSAN F. CLARK
COMMISSIONER J. TERRY DEASON
COMMISSIONER JULIA L. JOHNSON
COMMISSIONER DIANE K. KIESLING
COMMISSIONER JOE GARCIA

PROCEEDING:

AGENDA CONFERENCE

ITEM NUMBER:

46**

DATE:

March 19, 1996

PLACE:

4075 Esplanade Way, Room 148
Tallahassee, Florida

REPORTED BY:

JANE FAUROT, RPR
Notary Public in and for the
State of Florida at Large

JANE FAUROT, RPR
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(904) 379-8669

EXHIBIT "C"

JANE FAUROT, RPR -- (904)379-8669

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1 have of the fact that I now have read them, or I don't
2 read them and I can't fully rule on your motion to
3 dismiss. So, you know, I feel like I'm stuck between a
4 rock and a hard place at this point. You're forcing me
5 to read something I don't want to read, and so I don't
6 know how to proceed with that any further.

7 MR. SHREVE: That's an excellent point,
8 Commissioner. We have asked for an evidentiary
9 hearing. I can certainly see your point on not wanting
10 to read those. ✓ Our motion is not based on the fact
11 that we feel the Commission is prejudiced or biased.
12 Our motion is not based on the fact that the Lieutenant
13 Governor or Ms. Dousseau did anything wrong. Our
14 motion is based solely on the fact that we believe
15 there was misconduct on the part of Southern States.

16 Now, the evidentiary hearing will bring those
17 facts to the Commission. Not just the fact that the
18 letter was sent, or not just the fact of what the
19 letter contains. We will give Southern States an
20 opportunity to clear the air and give us an opportunity
21 to put the facts on the table as far as the motion goes
22 on those two things.

23 COMMISSIONER KIESLING: Well, then do I have some
24 agreement that, you know, I should go ahead and read
25 the letter even if -- read those letters since they are

1 you a few things that we have discovered since I filed
2 this motion, and they can respond as they wish, then
3 you can decide what you're going to do and it will keep
4 it on track. I didn't want to get things off track,
5 really.

6 CHAIRMAN CLARK: Well, let me see. There is a
7 motion to defer it and there is a second.

8 COMMISSIONER JOHNSON: Oh, no, I have withdrawn.

9 CHAIRMAN CLARK: She has withdrawn her second.

10 COMMISSIONER KIESLING: Oh, you have.

11 COMMISSIONER JOHNSON: Yes, based on the
12 discussion.

13 CHAIRMAN CLARK: It dies for lack of a second.
14 Mr. Twomey, would you like to make your argument now?

15 MR. TWOMEY: Yes, ma'am, and I will make it brief.
16 And it may get into your dilemma, Commissioner
17 Kiesling, because my motion styled initial motion for
18 assignment of all dockets, as well as the Public
19 Counsel's motion to dismiss, contains the letters as
20 appendices. And I want to make clear that my
21 requesting that the Commission assign this motion is
22 not to suggest that there is any active bias on the
23 part of any of you in hearing this. It is the
24 perception that I'm concerned with that you will face
25 if you hear this case, especially the factual aspects

1 of it, the perception of everybody out there in the
2 state, and primarily the customers of this utility. I
3 think everyone whether they have read the letters or
4 not is aware of the fact that the genesis of this is
5 that the Chairman in late December or early January,
6 made aware to the parties that the Commission had
7 received a letter addressed to her from Lieutenant
8 Governor Buddy McKay.

9 And subsequently -- and it concerned itself with
10 the SSU situation. Subsequently, on -- I think that
11 letter was written on December 21st by the Lieutenant
12 Governor. Subsequently, on January the 2nd, two days
13 prior to this Commission's vote on interim rates in the
14 SSU pending rate case, the Commission received a letter
15 from Commerce Secretary Charles Dousseau, also
16 addressing the SSU situation.

17 Now, the Lieutenant Governor's letter has been
18 variously characterized as only asking for information.
19 Now, I don't buy it that way. I don't think that any
20 reasonable person reading that letter can suggest that
21 the Lieutenant Governor was just on his own asking for
22 information because he was curious about Southern
23 States Utilities' treatment at the hands of the Public
24 Service Commission. The clincher on that is the fact
25 that as a result of discovery we have taken subsequent

1 to my filing of this motion, is that we have found that
2 SSU's outside lobbyist, Jeff Sharkey, now of the firm
3 Capital Strategies, Inc., drafted the letters, drafted
4 the letter, sent it by facsimile copy to the Lieutenant
5 Governor's Office, and that was the letter that was
6 signed almost verbatim. There was a split of one
7 paragraph, but the letter was admittedly drafted by
8 Jeff Sharkey, who has been a lobbyist for Southern
9 States Utilities, by his testimony, for some three or
10 four years going back to the time when he was an
11 employee, not of Capital Strategies, Inc., but an
12 employee of Chiles Communications, Inc., which as
13 everybody should know, was a firm formerly owned by Bud
14 Chiles, son of the Governor. And that that firm,
15 Chiles Communications, according to Mr. Sharkey, was
16 the firm that was initially retained by Southern States
17 Utilities as their lobbyist, governmental consultant,
18 or whatever that firm's various names and services go
19 by.

20 So it goes back three or four years by Mr.
21 Sharkey's testimony to the point where the firm was
22 owned by the Governor's son. The letter was drafted --
23 according to Mr. Sharkey, I believe the transcript will
24 show that members of SSU knew that it was being sent,
25 whether they reviewed it or not. The letter that went

1 to Commerce -- in addition to that, there was a letter
2 attached to the letter that came to the Chairman, and
3 those of you that have read this are aware that there
4 was a four-page letter by the Chief Executive Officer
5 of Minnesota Power addressed to the Governor, Aaron
6 Sandbolt (phonetic), who is a witness in this case,
7 variously complaining about Minnesota Power and
8 Southern States treatment at the hands of the Public
9 Service Commission. How you folks had hurt Southern
10 States Utilities, what the low range of return on
11 equity was as a result of their treatment at your
12 hands, and the fact that you, as I recall, he blamed you
13 for the reversal of the treatment of uniform rates,
14 which I think I deserve credit for, as well as Susan
15 Fox and others, but you got the blame for it. That
16 letter was attached, the Sandbolt letter to the
17 Governor was attached to the letter that Jeff Sharkey
18 prepared for the Lieutenant Governor's signature, which
19 came over to you.

20 The clear implication, I think, to any reasonable
21 reader is that SSU was being mistreated. They were an
22 important player in the state in terms of water and
23 sewer utilities that they had bought -- that they had
24 bought -- how did he say it. I should say how did
25 Sharkey say it, because we are not even sure now that

1 the Lieutenant Governor signed this letter, according
2 to the Governor, but he says, "They play a valuable
3 role in preserving the quality of Florida's water by
4 purchasing and upgrading small, often rural failed
5 water and wastewater systems. One of the things that
6 we have complained to you about over the last several
7 years that they did to the detriment of others."

8 Now, that letter came to you by his own admission
9 and by the documents I think that I have attached in
10 this motion, but we have otherwise, Jeff Sharkey, in
11 his facsimile letter to Commerce Secretary Dousseau,
12 gave them a deadline. Gave them a deadline, January
13 3rd. The day before the vote on interim rates in this
14 case. Commerce Secretary Dousseau, somewhat to his
15 credit and his staff, did a much better job of proofing
16 and redrafting the letter, but they got it to you on
17 January the 2nd, they met the deadline.

18 Jeff Sharkey denied knowing the importance of the
19 January 4th date, except that -- he denied knowing that
20 there was a vote before you, but he knew that his
21 clients were coming to Tallahassee. That is his
22 client, SSU, was coming to Tallahassee for something
23 important on January the 4th, and he -- I think it's
24 almost verbatim, said in his deposition he wanted to
25 show them that he could deliver for them. That he had

1 value. And that's why it was important to get the
2 Dousseau letter here, which Dousseau did.

3 Now, I'm not suggesting for a moment that you were
4 influenced in your vote on interim rates by either the
5 Lieutenant Governor's letter or Secretary Dousseau's
6 letter. But the fact that it happened, and the fact
7 that you all have admitted, I think, pretty much to it
8 in person that you weren't aware of receiving, any
9 commission receiving these type of letters historically
10 on the eve of a vote or by the intrusiveness of the
11 executive office, because of the fact that you all are
12 appointed by the Governor, I mean, that's just the way
13 it is. I mean, it may go through the nominating
14 council process and all the different hoops you all
15 have to jump through to get there, but when it's all
16 said and done, whoever sits in the Governor's mansion
17 makes the final decision. Whether you're put on the
18 first time, whether you're retained the second or third
19 time around, there is only one vote.

20 And it has to weigh -- I will tell you that it
21 weighs on the minds of a lot of my clients. You have
22 heard it from people at your customer service hearings
23 after this thing became public knowledge that people
24 were offended by this, and they were concerned.

25 Now, I will be -- I want to say again, and

1 reiterate, I don't suggest that you were biased in
2 this, but people are going to say it has to be in the
3 back of their minds. We have found -- I have found,
4 although I think it has been available earlier, that I
5 have found just in the last week that Tracy Smith, who
6 you all may know or may not know, who is SSU's
7 governmental affairs supervisor, or director, whatever
8 his title is, attended a dinner apparently in tribute
9 to Jeff Sharkey at the Governor's Mansion sometime in
10 early 1995. And that there is a letter which -- it's
11 in the discovery of this case, it's dated February 9th,
12 1995, shows that Tracy Smith writes somewhat in a
13 syrupy manner, I would describe it, about what a
14 memorable evening it was at which the -- let me just
15 quote. It says, "The praise and kind words of
16 appreciation given you by Governor and Mrs. Chiles were
17 obviously heartfelt. There is a special bond between
18 you and the Chiles' that can only be --" it should be
19 built "-- build through a long association of respect
20 and love. I treasure having been able to witness that
21 show of affection."

22 Now, knowing that, how can -- it is not right that
23 you should be put in the position of having to
24 establish all of these facts, sit in judgment of this
25 company at least initially knowing that their hired

1 whether or not I please the Governor or anyone else is
2 not my primary concern. I have to live with myself,
3 and I have to make sure that I have done what I thought
4 is the right thing, and I can defend it. And that is
5 the way I have always conducted my professional life.
6 I don't intend to change it now. And it seems to me
7 that without an allegation that we are, in fact, biased
8 that there would no basis for recusal, and it seems to
9 me the same standard should apply here, that the movant
10 is not making an allegation of bias.

11 MR. TWOMEY: Let me respond to what Ms. Jaber
12 said. She is suggesting -- she gets up first and she
13 says it's her professional opinion that you don't have
14 to read the letters, and then she says that she would
15 like to see my motion grounded in fact. Now, which is
16 it? I repeat, I'm not suggesting that any of you are
17 biased, and I accept what you just said, Madam
18 Chairman. But the point is is there is an appearance,
19 and if you don't understand that now, then you need to
20 start -- I'm suggesting respectfully -- by reading
21 these letters. Everybody else virtually in the State
22 of Florida, if you don't understand it, believes that
23 the Office of the Governor, and the person of the
24 Lieutenant Governor, and the Florida Secretary of
25 Commerce made a mistake in pressuring you with those

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION
TALLAHASSEE, FLORIDA

IN RE: Application for rate increase and increase in service availability charges by Southern States Utilities, Inc. for Orange-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



BEFORE:

CHAIRMAN SUSAN F. CLARK
COMMISSIONER J. TERRY DEASON
COMMISSIONER JULIA L. JOHNSON
COMMISSIONER DIANE K. KIESLING
COMMISSIONER JOE GARCIA

PROCEEDING:

AGENDA CONFERENCE

ITEM NUMBER:

60**

DATE:

April 16, 1996

PLACE:

4075 Esplanade Way, Room 148
Tallahassee, Florida

REPORTED BY:

JANE FAUROT, RPR
Notary Public in and for the
State of Florida at Large

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EXHIBIT "D"

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1 Public Counsel has taken the position that it has a
2 conflict on the rate structure issue.

3 CHAIRMAN CLARK: Okay. Mr. Beck, Mr. Shreve, or
4 Mr. Twomey, do you want to respond?

5 MR. BECK: Thank you, Madam Chairman. Let me tell
6 you about the misconduct that is alleged in our motion.
7 We have alleged that on December 13th, 1995, Jeff
8 Sharky, who is the paid lobbyist of Southern States,
9 sent a fax to the Lieutenant Governor, and we allege in
10 there that the Office of the Governor is the office
11 that appoints you as Commissioners. And he asked the
12 Lieutenant -- and he had a draft letter that he sent to
13 the Lieutenant Governor that he asked if he would send
14 it to the Chairman of the Commission. That draft
15 letter by Southern States' lobbyist expressed concern
16 about the regulatory environment at the Commission
17 which resulted in a year-to-date loss to the utility.
18 This is while they are in for a pending rate case.
19 That draft letter of Southern States' lobbyist also
20 expressed concern if the Commission were to place
21 Southern States in serious financial jeopardy. It
22 asked the Chairman of the Commission to respond to the
23 Lieutenant Governor about the overall economic and
24 financial consequences facing Southern States. If that
25 is not talking about the pending rate case, I don't

1 know what is.

2 We have alleged in our motion that Mr. Sharky's
3 intent on behalf of Southern States was to influence
4 the Commission on pending matters to the prejudice of
5 the other parties in the case. We have set forth
6 considerable case law to you that a direct and
7 contumacious disregard of a court's authority warrants
8 dismissal, as will bad faith, willful disregard, or
9 gross indifference to an order of a court, or conduct
10 which evinces deliberate callousness, and we have
11 alleged that those actions that we told you about meet
12 that standard.

13 We have also cited the Commission's broad
14 authority under Section 367.121(1)(g), that gives the
15 Commission the power to exercise all judicial powers,
16 issue all writs, and do all things necessary or
17 convenient to the full and complete exercise of its
18 jurisdiction and the enforcement of its orders and
19 requirements. I think we have clearly alleged a prima
20 facie case. The question is are you going to permit us
21 to present evidence that supports the motion to
22 dismiss. There is nothing that has been said by
23 counsel to Southern States which would have you believe
24 that you have the right to deny us the opportunity to
25 present evidence that supports this motion.

1 MR. TWOMEY: Just very briefly, Madam Chairman and
2 Commissioners. I think Mr. Hoffman may have been off
3 just a little bit. It is true that several weeks ago I
4 didn't suggest that we were saying that there was bias
5 on your part, or that there was prejudice. I don't
6 recall saying that I believe there was not prejudice
7 involved as a result of these letters and the other
8 actions taken by the company. As far as the Gulf Power
9 cases, the two cases, I think Chairman Clark touched on
10 the notion that those two cases alone don't describe
11 the limits, that is with respect to fuel,
12 mismanagement, theft of property, and that kind of
13 thing. Those two cases don't describe the outer limits
14 of the action this Commission can take in determining
15 whether there is mismanagement or not. And keep in
16 mind, Madam Chairman --

17 COMMISSIONER GARCIA: Mismanagement or misconduct?

18 MR. TWOMEY: Sir?

19 COMMISSIONER GARCIA: Mismanagement or misconduct?

20 MR. TWOMEY: I think misconduct is a subset of
21 mismanagement. It is encompassed.

22 COMMISSIONER GARCIA: I would agree with you, but
23 to some degree I think we have stated the opposite,
24 that misconduct is the universe under which
25 mismanagement falls.

1 MR. BECK: Yes, Commissioner, I can try. A couple
2 of points. We have cited Jennings, and it deals with
3 the portion of our motion that deals with ex parte
4 contacts. The motion is much more than just that,
5 because there is much other authority that we cite on
6 the contumacious actions of Southern States that are
7 independent of whether it is an ex parte contact.
8 There is an allegation of prejudice, and under Jennings
9 there is a presumption of prejudice that they have to
10 overcome. If they had read the motion they will see
11 that there is an allegation of prejudice in there. I
12 don't know where they are getting the lack of that
13 from. But that is not the focus of our motion, I agree
14 completely with Mr. Hoffman. The focus of our motion
15 is on their misconduct, whether or not that misconduct
16 was successful or not in prejudicing the Commission.

17 COMMISSION DEASON: Let me ask, Mr. Hoffman made
18 reference to the fact that statutorily the only remedy,
19 and this is for ex parte, is for the disqualification,
20 and that there is not a remedy for dismissing a
21 petitioner's case. And what is your position on that?


22 MR. BECK: If the sole allegation were an ordinary
23 ex parte communication by anybody on the street coming
24 to the Commission about it, there may be some merit to
25 what he said. But that is not where our motion is

STATE OF FLORIDA)
COUNTY OF ORANGE)
_____)

AFFIDAVIT

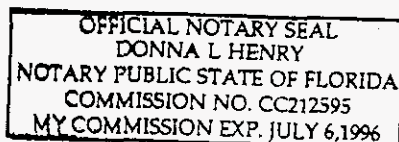
Wayne Vowell, having been duly sworn, states as follows:


1. I am employed by Southern States Utilities, Inc. ("SSU"), whose central office is located in Apopka, Florida.
2. As part of my duties, I attended a customer meeting(s) held by SSU from January 16, 1996 to January 23, 1996. The purpose of these meetings was to provide additional information to customers on the pending rate case and various other rate matters. Primarily, SSU representatives wanted customers to know the full extent of their exposure in the 1995 Rate Case, break that exposure down to the maximum amount they would pay under the various rate structures under consideration and wanted to be available to answer any questions attending customers might have on the status of the various rate proceedings.
3. At the meetings I attended, no representative of Southern States Utilities told the customers that the Public Service Commission already determined the amount of revenue SSU would be entitled to receive in this rate case. To the contrary, the customers were advised that the Florida Public Service Commission would follow a two step procedure. They would first determine the amount of revenues to which the Company was entitled. After those revenues were determined, the FPSC would then determine the rate structure.
4. At the meeting(s), the customers were told that they were represented by the Office of Public Counsel who has served extensive discovery on SSU, reviewed the company's books and records and would take depositions of the Company's witnesses.



Wayne Vowell

The foregoing instrument was acknowledged before me this 15th day of April, 1996, by Wayne Vowell, who is personally known to me and who did take an oath.





Donna L. Henry
Notary Public, State of Florida at Large
Commission No. CC212595
My Commission Expires: 7-6-96

COMPOSITE EXHIBIT "E"

STATE OF FLORIDA)
COUNTY OF ORANGE)
_____)

AFFIDAVIT

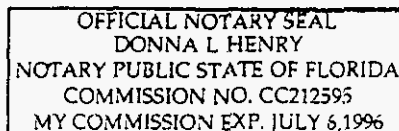
Karla Olson Teasley, having been duly sworn, states as follows:

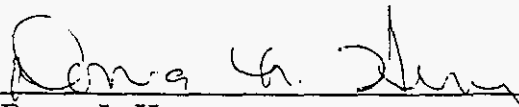
1. I am employed by Southern States Utilities, Inc. ("SSU"), whose central office is located in Apopka, Florida.
2. As part of my duties, I attended several customer meetings held by SSU from January 16, 1996 to January 23, 1996. The purpose of these meetings was to provide additional information to customers on the pending rate case and various other rate matters. Primarily, SSU representatives wanted customers to know the full extent of their exposure in the 1995 Rate Case, provided information on the maximum amount they would pay under the various rate structures under consideration and wanted to be available to answer any questions attending customers might have on the status of the various rate proceedings.
3. At the meetings I attended, no representative of Southern States Utilities told the customers that the Florida Public Service Commission (FPSC) had already determined the amount of revenue SSU would be entitled to receive in this rate case. To the contrary, the customers were advised that the FPSC would follow a two step procedure. They would first determine the amount of revenues to which the Company was entitled. After that revenue was determined, the FPSC would then determine the rate structure.
4. At the meetings, the customers were told that they were represented by the Office of Public Counsel who has served extensive discovery on SSU, reviewed the company's books and records and would take depositions of the Company's witnesses.



Karla Olson Teasley

The foregoing instrument was acknowledged before me this 12th day of April, 1996, by Karla Olson Teasley, who is personally known to me and who did take an oath.





Donna L. Henry
Notary Public, State of Florida at Large
Commission No. CC212595
My Commission Expires: 7-6-96

STATE OF FLORIDA)
COUNTY OF ORANGE)
_____)

AFFIDAVIT

Gil Compton, having been duly sworn, states as follows:

1. I am employed by Southern States Utilities, Inc. ("SSU"), whose central office is located in Apopka, Florida.

2. As part of my duties, I attended a customer meeting(s) held by SSU from January 16, 1996 to January 23, 1996. The purpose of these meetings was to provide additional information to customers on the pending rate case and various other rate matters. Primarily, SSU representatives wanted customers to know the full extent of their exposure in the 1995 Rate Case, break that exposure down to the maximum amount they would pay under the various rate structures under consideration and wanted to be available to answer any questions attending customers might have on the status of the various rate proceedings.

3. At the meetings I attended, no representative of Southern States Utilities told the customers that the Public Service Commission already determined the amount of revenue SSU would be entitled to receive in this rate case. To the contrary, the customers were advised that the Florida Public Service Commission would follow a two step procedure. They would first determine the amount of revenues to which the Company was entitled. After those revenues were determined, the FPSC would then determine the rate structure.

4. At the meeting(s), the customers were told that they were represented by the Office of Public Counsel who has served extensive discovery on SSU, reviewed the company's books and records and would take depositions of the Company's witnesses.

Gil Compton

Gil Compton

The foregoing instrument was acknowledged before me this 12th day of April, 1996, by Gil Compton, who is personally known to me and who did take an oath.

OFFICIAL NOTARY SEAL
DONNA L HENRY
NOTARY PUBLIC STATE OF FLORIDA
COMMISSION NO. CC212595
MY COMMISSION EXP. JULY 6, 1996

Donna L. Henry

Donna L. Henry
Notary Public, State of Florida at Large
Commission No. CC212595
My Commission Expires: 7-6-96

STATE OF FLORIDA)
COUNTY OF ORANGE)
_____)

AFFIDAVIT

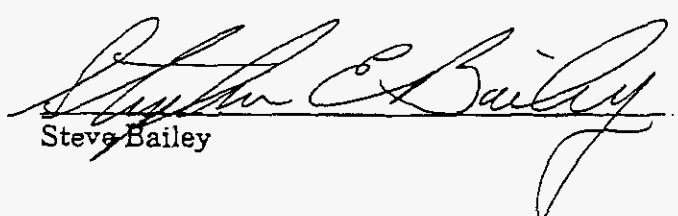
Steve Bailey, having been duly sworn, states as follows:

1. I am employed by Southern States Utilities, Inc. ("SSU"), whose central office is located in Apopka, Florida.

2. As part of my duties, I attended a customer meeting(s) held by SSU from January 16, 1996 to January 23, 1996. The purpose of these meetings was to provide additional information to customers on the pending rate case and various other rate matters. Primarily, SSU representatives wanted customers to know the full extent of their exposure in the 1995 Rate Case, break that exposure down to the maximum amount they would pay under the various rate structures under consideration and wanted to be available to answer any questions attending customers might have on the status of the various rate proceedings.

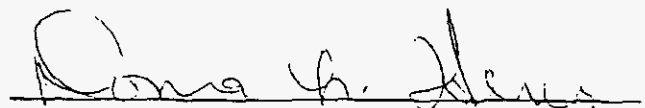
3. At the meetings I attended, no representative of Southern States Utilities told the customers that the Public Service Commission already determined the amount of revenue SSU would be entitled to receive in this rate case. To the contrary, the customers were advised that the Florida Public Service Commission would follow a two step procedure. They would first determine the amount of revenues to which the Company was entitled. After those revenues were determined, the FPSC would then determine the rate structure.

4. At the meeting(s), the customers were told that they were represented by the Office of Public Counsel who has served extensive discovery on SSU, reviewed the company's books and records and would take depositions of the Company's witnesses.


Steve Bailey

The foregoing instrument was acknowledged before me this 14th day of April, 1996, by Steve Bailey, who is personally known to me and who did take an oath.

OFFICIAL NOTARY SEAL
DONNA L HENRY
NOTARY PUBLIC STATE OF FLORIDA
COMMISSION NO. CC212595
MY COMMISSION EXP. JULY 6, 1996


Donna L. Henry
Notary Public, State of Florida at Large
Commission No. CC212595
My Commission Expires: 7-6-96

STATE OF FLORIDA)
COUNTY OF ORANGE)
_____)

AFFIDAVIT

Don Corder, having been duly sworn, states as follows:

1. I am employed by Southern States Utilities, Inc. ("SSU"), whose central office is located in Apopka, Florida.

2. As part of my duties, I attended a customer meeting(s) held by SSU from January 16, 1996 to January 23, 1996. The purpose of these meetings was to provide additional information to customers on the pending rate case and various other rate matters. Primarily, SSU representatives wanted customers to know the full extent of their exposure in the 1995 Rate Case, break that exposure down to the maximum amount they would pay under the various rate structures under consideration and wanted to be available to answer any questions attending customers might have on the status of the various rate proceedings.

3. At the meetings I attended, no representative of Southern States Utilities told the customers that the Public Service Commission already determined the amount of revenue SSU would be entitled to receive in this rate case. To the contrary, the customers were advised that the Florida Public Service Commission would follow a two step procedure. They would first determine the amount of revenues to which the Company was entitled. After those revenues were determined, the FPSC would then determine the rate structure.

4. At the meeting(s), the customers were told that they were represented by the Office of Public Counsel who has served extensive discovery on SSU, reviewed the company's books and records and would take depositions of the Company's witnesses.

Donald B. Corder
Don Corder

The foregoing instrument was acknowledged before me this 12th day of April, 1996, by Don Corder, who is personally known to me and who did take an oath.

OFFICIAL NOTARY SEAL
DONNA L HENRY
NOTARY PUBLIC STATE OF FLORIDA
COMMISSION NO. CC212595
MY COMMISSION EXP. JULY 6, 1996

Donna L. Henry
Donna L. Henry
Notary Public, State of Florida at Large
Commission No. CC212595
My Commission Expires: 7-6-96

STATE OF FLORIDA)
COUNTY OF ORANGE)
_____)

AFFIDAVIT

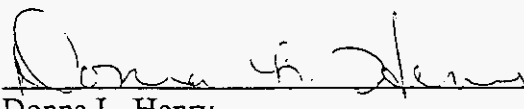
Judy Field, having been duly sworn, states as follows:

1. I am employed by Southern States Utilities, Inc. ("SSU"), whose central office is located in Apopka, Florida.
2. As part of my duties, I attended a customer meeting(s) held by SSU from January 16, 1996 to January 23, 1996. The purpose of these meetings was to provide additional information to customers on the pending rate case and various other rate matters. Primarily, SSU representatives wanted customers to know the full extent of their exposure in the 1995 Rate Case, break that exposure down to the maximum amount they would pay under the various rate structures under consideration and wanted to be available to answer any questions attending customers might have on the status of the various rate proceedings.
3. At the meetings I attended, no representative of Southern States Utilities told the customers that the Public Service Commission already determined the amount of revenue SSU would be entitled to receive in this rate case. To the contrary, the customers were advised that the Florida Public Service Commission would follow a two step procedure. They would first determine the amount of revenues to which the Company was entitled. After those revenues were determined, the FPSC would then determine the rate structure.
4. At the meeting(s), the customers were told that they were represented by the Office of Public Counsel who has served extensive discovery on SSU, reviewed the company's books and records and would take depositions of the Company's witnesses.

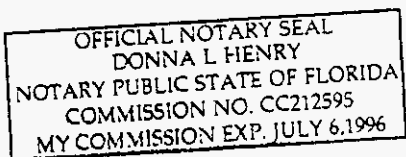


Judy Field

The foregoing instrument was acknowledged before me this 14th day of April, 1996, by Judy Field, who is personally known to me and who did take an oath.



Donna L. Henry
Notary Public, State of Florida at Large
Commission No. CC212595
My Commission Expires: 7-6-96



STATE OF FLORIDA)
COUNTY OF ORANGE)
_____)

AFFIDAVIT

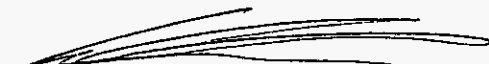
William Goucher, having been duly sworn, states as follows:

1. I am employed by Southern States Utilities, Inc. ("SSU"), whose central office is located in Apopka, Florida.

2. As part of my duties, I attended a customer meeting(s) held by SSU from January 16, 1996 to January 23, 1996. The purpose of these meetings was to provide additional information to customers on the pending rate case and various other rate matters. Primarily, SSU representatives wanted customers to know the full extent of their exposure in the 1995 Rate Case, break that exposure down to the maximum amount they would pay under the various rate structures under consideration and wanted to be available to answer any questions attending customers might have on the status of the various rate proceedings.

3. At the meetings I attended, no representative of Southern States Utilities told the customers that the Public Service Commission already determined the amount of revenue SSU would be entitled to receive in this rate case. To the contrary, the customers were advised that the Florida Public Service Commission would follow a two step procedure. They would first determine the amount of revenues to which the Company was entitled. After those revenues were determined, the FPSC would then determine the rate structure.

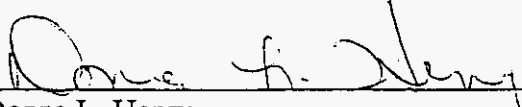
4. At the meeting(s), the customers were told that they were represented by the Office of Public Counsel who has served extensive discovery on SSU, reviewed the company's books and records and would take depositions of the Company's witnesses.



William Goucher

The foregoing instrument was acknowledged before me this 11th day of April, 1996, by William Goucher, who is personally known to me and who did take an oath.

OFFICIAL NOTARY SEAL
DONNA L HENRY
NOTARY PUBLIC STATE OF FLORIDA
COMMISSION NO. CC212595
MY COMMISSION EXP. JULY 6, 1996



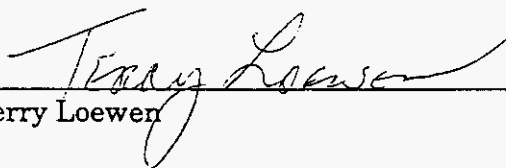
Donna L. Henry
Notary Public, State of Florida at Large
Commission No. CC212595
My Commission Expires: 7-6-96

STATE OF FLORIDA)
COUNTY OF ORANGE)
_____)

AFFIDAVIT

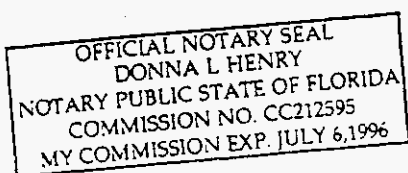
Terry Loewen, having been duly sworn, states as follows:

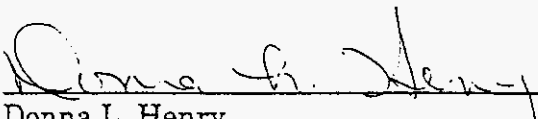
1. I am employed by Southern States Utilities, Inc. ("SSU"), whose central office is located in Apopka, Florida.
2. As part of my duties, I attended a customer meeting(s) held by SSU from January 16, 1996 to January 23, 1996. The purpose of these meetings was to provide additional information to customers on the pending rate case and various other rate matters. Primarily, SSU representatives wanted customers to know the full extent of their exposure in the 1995 Rate Case, break that exposure down to the maximum amount they would pay under the various rate structures under consideration and wanted to be available to answer any questions attending customers might have on the status of the various rate proceedings.
3. At the meetings I attended, no representative of Southern States Utilities told the customers that the Public Service Commission already determined the amount of revenue SSU would be entitled to receive in this rate case. To the contrary, the customers were advised that the Florida Public Service Commission would follow a two step procedure. They would first determine the amount of revenues to which the Company was entitled. After those revenues were determined, the FPSC would then determine the rate structure.
4. At the meeting(s), the customers were told that they were represented by the Office of Public Counsel who has served extensive discovery on SSU, reviewed the company's books and records and would take depositions of the Company's witnesses.



Terry Loewen

The foregoing instrument was acknowledged before me this 11th day of April, 1996, by Terry Loewen, who is personally known to me and who did take an oath.






Donna L. Henry
Notary Public, State of Florida at Large
Commission No. CC212595
My Commission Expires: 7-6-96

STATE OF FLORIDA)
COUNTY OF ORANGE)
_____)

AFFIDAVIT

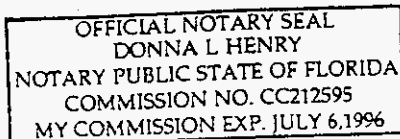
Forrest Ludsen, having been duly sworn, states as follows:


1. I am employed by Southern States Utilities, Inc. ("SSU"), whose central office is located in Apopka, Florida.
2. As part of my duties, I attended a customer meeting(s) held by SSU from January 16, 1996 to January 23, 1996. The purpose of these meetings was to provide additional information to customers on the pending rate case and various other rate matters. Primarily, SSU representatives wanted customers to know the full extent of their exposure in the 1995 Rate Case, break that exposure down to the maximum amount they would pay under the various rate structures under consideration and wanted to be available to answer any questions attending customers might have on the status of the various rate proceedings.
3. At the meetings I attended, no representative of Southern States Utilities told the customers that the Public Service Commission already determined the amount of revenue SSU would be entitled to receive in this rate case. To the contrary, the customers were advised that the Florida Public Service Commission would follow a two step procedure. They would first determine the amount of revenues to which the Company was entitled. After those revenues were determined, the FPSC would then determine the rate structure.
4. At the meeting(s), the customers were told that they were represented by the Office of Public Counsel who has served extensive discovery on SSU, reviewed the company's books and records and would take depositions of the Company's witnesses.



Forrest Ludsen

The foregoing instrument was acknowledged before me this 12th day of April, 1996, by Forrest Ludsen, who is personally known to me and who did take an oath.





Donna L. Henry
Notary Public, State of Florida at Large
Commission No. CC212595
My Commission Expires: 7-6-96

STATE OF FLORIDA)
COUNTY OF ORANGE)
_____)

AFFIDAVIT

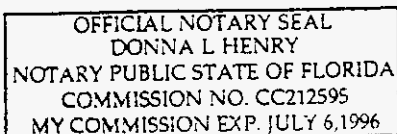
Julie MacLane, having been duly sworn, states as follows:

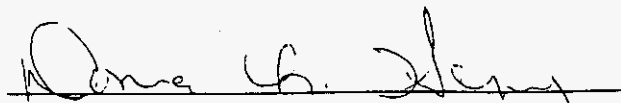
1. I am employed by Southern States Utilities, Inc. ("SSU"), whose central office is located in Apopka, Florida.
2. As part of my duties, I attended a customer meeting(s) held by SSU from January 16, 1996 to January 23, 1996. The purpose of these meetings was to provide additional information to customers on the pending rate case and various other rate matters. Primarily, SSU representatives wanted customers to know the full extent of their exposure in the 1995 Rate Case, break that exposure down to the maximum amount they would pay under the various rate structures under consideration and wanted to be available to answer any questions attending customers might have on the status of the various rate proceedings.
3. At the meetings I attended, no representative of Southern States Utilities told the customers that the Public Service Commission already determined the amount of revenue SSU would be entitled to receive in this rate case. To the contrary, the customers were advised that the Florida Public Service Commission would follow a two step procedure. They would first determine the amount of revenues to which the Company was entitled. After those revenues were determined, the FPSC would then determine the rate structure.
4. At the meeting(s), the customers were told that they were represented by the Office of Public Counsel who has served extensive discovery on SSU, reviewed the company's books and records and would take depositions of the Company's witnesses.



Julie MacLane

The foregoing instrument was acknowledged before me this 11th day of April, 1996, by Julie MacLane, who is personally known to me and who did take an oath.





Donna L. Henry
Notary Public, State of Florida at Large
Commission No. CC212595
My Commission Expires: 7-6-96

STATE OF FLORIDA)
COUNTY OF ORANGE)
_____)

AFFIDAVIT

Bruce Paster, having been duly sworn, states as follows:

1. I am employed by Southern States Utilities, Inc. ("SSU"), whose central office is located in Apopka, Florida.

2. As part of my duties, I attended a customer meeting(s) held by SSU from January 16, 1996 to January 23, 1996. The purpose of these meetings was to provide additional information to customers on the pending rate case and various other rate matters. Primarily, SSU representatives wanted customers to know the full extent of their exposure in the 1995 Rate Case, break that exposure down to the maximum amount they would pay under the various rate structures under consideration and wanted to be available to answer any questions attending customers might have on the status of the various rate proceedings.

3. At the meetings I attended, no representative of Southern States Utilities told the customers that the Public Service Commission already determined the amount of revenue SSU would be entitled to receive in this rate case. To the contrary, the customers were advised that the Florida Public Service Commission would follow a two step procedure. They would first determine the amount of revenues to which the Company was entitled. After those revenues were determined, the FPSC would then determine the rate structure.

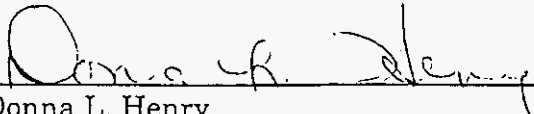
4. At the meeting(s), the customers were told that they were represented by the Office of Public Counsel who has served extensive discovery on SSU, reviewed the company's books and records and would take depositions of the Company's witnesses.



Bruce Paster

The foregoing instrument was acknowledged before me this 11th day of April, 1996, by Bruce Paster, who is personally known to me and who did take an oath.

OFFICIAL NOTARY SEAL
DONNA L HENRY
NOTARY PUBLIC STATE OF FLORIDA
COMMISSION NO. CC212595
MY COMMISSION EXP. JULY 6, 1996



Donna L. Henry
Notary Public, State of Florida at Large
Commission No. CC212595
My Commission Expires: 7-6-96

STATE OF FLORIDA)
COUNTY OF ORANGE)
_____)

AFFIDAVIT

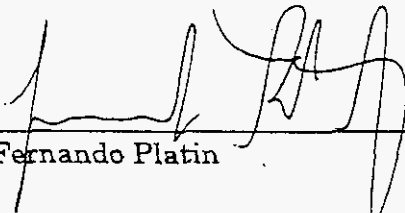
Fernando Platin, having been duly sworn, states as follows:

1. I am employed by Southern States Utilities, Inc. ("SSU"), whose central office is located in Apopka, Florida.

2. As part of my duties, I attended a customer meeting(s) held by SSU from January 16, 1996 to January 23, 1996. The purpose of these meetings was to provide additional information to customers on the pending rate case and various other rate matters. Primarily, SSU representatives wanted customers to know the full extent of their exposure in the 1995 Rate Case, break that exposure down to the maximum amount they would pay under the various rate structures under consideration and wanted to be available to answer any questions attending customers might have on the status of the various rate proceedings.


3. At the meetings I attended, no representative of Southern States Utilities told the customers that the Public Service Commission already determined the amount of revenue SSU would be entitled to receive in this rate case. To the contrary, the customers were advised that the Florida Public Service Commission would follow a two step procedure. They would first determine the amount of revenues to which the Company was entitled. After those revenues were determined, the FPSC would then determine the rate structure.

4. At the meeting(s), the customers were told that they were represented by the Office of Public Counsel who has served extensive discovery on SSU, reviewed the company's books and records and would take depositions of the Company's witnesses.



Fernando Platin

The foregoing instrument was acknowledged before me this 11th day of April, 1996, by Fernando Platin, who is personally known to me and who did take an oath.



Donna L. Henry
Notary Public, State of Florida at Large
Commission No. CC212595
My Commission Expires: 7-6-96

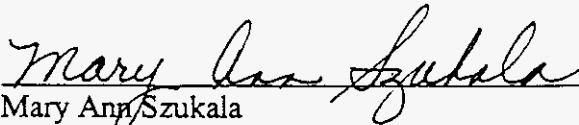
OFFICIAL NOTARY SEAL
DONNA L HENRY
NOTARY PUBLIC STATE OF FLORIDA
COMMISSION NO. CC212595
MY COMMISSION EXP. JULY 6, 1996

STATE OF FLORIDA)
COUNTY OF ORANGE)
_____)

AFFIDAVIT

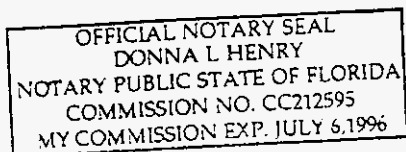
Mary Ann Szukala, having been duly sworn, states as follows:

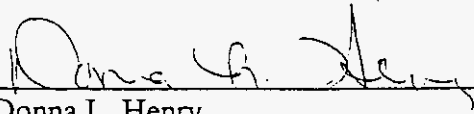
1. I am employed by Southern States Utilities, Inc. ("SSU"), whose central office is located in Apopka, Florida.
2. As part of my duties, I attended a customer meeting(s) held by SSU from January 16, 1996 to January 23, 1996. The purpose of these meetings was to provide additional information to customers on the pending rate case and various other rate matters. Primarily, SSU representatives wanted customers to know the full extent of their exposure in the 1995 Rate Case, break that exposure down to the maximum amount they would pay under the various rate structures under consideration and wanted to be available to answer any questions attending customers might have on the status of the various rate proceedings.
3. At the meetings I attended, no representative of Southern States Utilities told the customers that the Public Service Commission already determined the amount of revenue SSU would be entitled to receive in this rate case. To the contrary, the customers were advised that the Florida Public Service Commission would follow a two step procedure. They would first determine the amount of revenues to which the Company was entitled. After those revenues were determined, the FPSC would then determine the rate structure.
4. At the meeting(s), the customers were told that they were represented by the Office of Public Counsel who has served extensive discovery on SSU, reviewed the company's books and records and would take depositions of the Company's witnesses.



Mary Ann Szukala

The foregoing instrument was acknowledged before me this 14th day of April, 1996, by Mary Ann Szukala, who is personally known to me and who did take an oath.





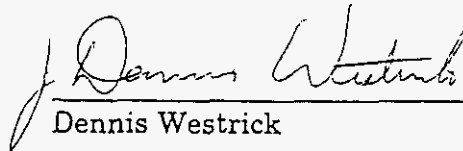
Donna L. Henry
Notary Public, State of Florida at Large
Commission No. CC212595
My Commission Expires: 7-6-96

STATE OF FLORIDA)
COUNTY OF ORANGE)
_____)

AFFIDAVIT

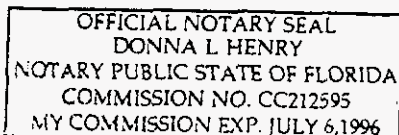
Dennis Westrick, having been duly sworn, states as follows:

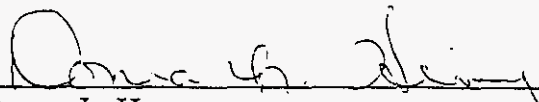
1. I am employed by Southern States Utilities, Inc. ("SSU"), whose central office is located in Apopka, Florida.
2. As part of my duties, I attended a customer meeting(s) held by SSU from January 16, 1996 to January 23, 1996. The purpose of these meetings was to provide additional information to customers on the pending rate case and various other rate matters. Primarily, SSU representatives wanted customers to know the full extent of their exposure in the 1995 Rate Case, break that exposure down to the maximum amount they would pay under the various rate structures under consideration and wanted to be available to answer any questions attending customers might have on the status of the various rate proceedings.
3. At the meetings I attended, no representative of Southern States Utilities told the customers that the Public Service Commission already determined the amount of revenue SSU would be entitled to receive in this rate case. To the contrary, the customers were advised that the Florida Public Service Commission would follow a two step procedure. They would first determine the amount of revenues to which the Company was entitled. After those revenues were determined, the FPSC would then determine the rate structure.
4. At the meeting(s), the customers were told that they were represented by the Office of Public Counsel who has served extensive discovery on SSU, reviewed the company's books and records and would take depositions of the Company's witnesses.



Dennis Westrick

The foregoing instrument was acknowledged before me this 11th day of April, 1996, by Dennis Westrick, who is personally known to me and who did take an oath.





Donna L. Henry
Notary Public, State of Florida at Large
Commission No. CC212595
My Commission Expires: 7-6-96

STATE OF FLORIDA)
COUNTY OF ORANGE)
_____)

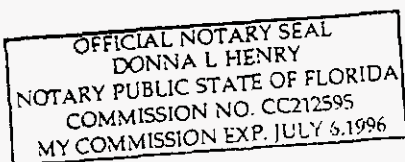
AFFIDAVIT

Jeff Wilson, having been duly sworn, states as follows:

1. I am employed by Southern States Utilities, Inc. ("SSU"), whose central office is located in Apopka, Florida.
2. As part of my duties, I attended a customer meeting(s) held by SSU from January 16, 1996 to January 23, 1996. The purpose of these meetings was to provide additional information to customers on the pending rate case and various other rate matters. Primarily, SSU representatives wanted customers to know the full extent of their exposure in the 1995 Rate Case, break that exposure down to the maximum amount they would pay under the various rate structures under consideration and wanted to be available to answer any questions attending customers might have on the status of the various rate proceedings.
3. At the meetings I attended, no representative of Southern States Utilities told the customers that the Public Service Commission already determined the amount of revenue SSU would be entitled to receive in this rate case. To the contrary, the customers were advised that the Florida Public Service Commission would follow a two step procedure. They would first determine the amount of revenues to which the Company was entitled. After those revenues were determined, the FPSC would then determine the rate structure.
4. At the meeting(s), the customers were told that they were represented by the Office of Public Counsel who has served extensive discovery on SSU, reviewed the company's books and records and would take depositions of the Company's witnesses.

Jeffrey Wilson
Jeff Wilson

The foregoing instrument was acknowledged before me this 11th day of April, 1996, by Jeff Wilson, who is personally known to me and who did take an oath.



Donna L. Henry
Donna L. Henry
Notary Public, State of Florida at Large
Commission No. CC212595
My Commission Expires: 7-6-96

STATE OF FLORIDA)
COUNTY OF ORANGE)
_____)

AFFIDAVIT

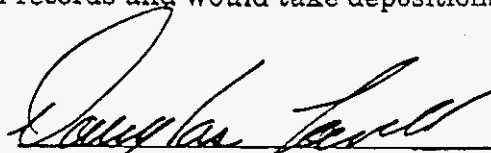
Doug Lovell, having been duly sworn, states as follows:

1. I am employed by Southern States Utilities, Inc. ("SSU"), whose central office is located in Apopka, Florida.

2. As part of my duties, I attended a customer meeting(s) held by SSU from January 16, 1996 to January 23, 1996. The purpose of these meetings was to provide additional information to customers on the pending rate case and various other rate matters. Primarily, SSU representatives wanted customers to know the full extent of their exposure in the 1995 Rate Case, break that exposure down to the maximum amount they would pay under the various rate structures under consideration and wanted to be available to answer any questions attending customers might have on the status of the various rate proceedings.

3. At the meetings I attended, no representative of Southern States Utilities told the customers that the Public Service Commission already determined the amount of revenue SSU would be entitled to receive in this rate case. To the contrary, the customers were advised that the Florida Public Service Commission would follow a two step procedure. They would first determine the amount of revenues to which the Company was entitled. After those revenues were determined, the FPSC would then determine the rate structure.


4. At the meeting(s), the customers were told that they were represented by the Office of Public Counsel who has served extensive discovery on SSU, reviewed the company's books and records and would take depositions of the Company's witnesses.



Doug Lovell

The foregoing instrument was acknowledged before me this 15th day of April, 1996, by Doug Lovell, who is personally known to me and who did take an oath.

OFFICIAL NOTARY SEAL
DONNA L HENRY
NOTARY PUBLIC STATE OF FLORIDA
COMMISSION NO. CC212595
MY COMMISSION EXP. JULY 6, 1996



Donna L. Henry
Notary Public, State of Florida at Large
Commission No. CC212595
My Commission Expires: 7-6-96

STATE OF FLORIDA)
COUNTY OF ORANGE)
_____)

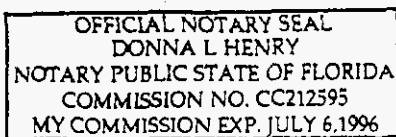
AFFIDAVIT

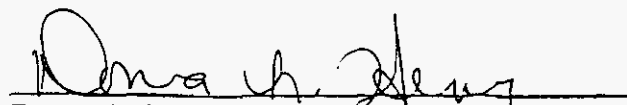
Steve Blankshein, having been duly sworn, states as follows:

1. I am employed by Southern States Utilities, Inc. ("SSU"), whose central office is located in Apopka, Florida.
2. As part of my duties, I attended a customer meeting(s) held by SSU from January 16, 1996 to January 23, 1996. The purpose of these meetings was to provide additional information to customers on the pending rate case and various other rate matters. Primarily, SSU representatives wanted customers to know the full extent of their exposure in the 1995 Rate Case, break that exposure down to the maximum amount they would pay under the various rate structures under consideration and wanted to be available to answer any questions attending customers might have on the status of the various rate proceedings.
3. At the meetings I attended, no representative of Southern States Utilities told the customers that the Public Service Commission already determined the amount of revenue SSU would be entitled to receive in this rate case. To the contrary, the customers were advised that the Florida Public Service Commission would follow a two step procedure. They would first determine the amount of revenues to which the Company was entitled. After those revenues were determined, the FPSC would then determine the rate structure.
4. At the meeting(s), the customers were told that they were represented by the Office of Public Counsel who has served extensive discovery on SSU, reviewed the company's books and records and would take depositions of the Company's witnesses.


Steve Blankshein

The foregoing instrument was acknowledged before me this 15th day of April, 1996, by Steve Blankshein, who is personally known to me and who did take an oath.




Donna L. Henry
Notary Public, State of Florida at Large
Commission No. CC212595
My Commission Expires: 7-6-96

STATE OF FLORIDA)
COUNTY OF ORANGE)
_____)

AFFIDAVIT

William Dave Denny, having been duly sworn, states as follows:

1. I am employed by Southern States Utilities, Inc. ("SSU"), whose central office is located in Apopka, Florida.

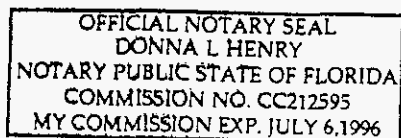
2. As part of my duties, I attended a customer meeting(s) held by SSU from January 16, 1996 to January 23, 1996. The purpose of these meetings was to provide additional information to customers on the pending rate case and various other rate matters. Primarily, SSU representatives wanted customers to know the full extent of their exposure in the 1995 Rate Case, break that exposure down to the maximum amount they would pay under the various rate structures under consideration and wanted to be available to answer any questions attending customers might have on the status of the various rate proceedings.

3. At the meetings I attended, no representative of Southern States Utilities told the customers that the Public Service Commission already determined the amount of revenue SSU would be entitled to receive in this rate case. To the contrary, the customers were advised that the Florida Public Service Commission would follow a two step procedure. They would first determine the amount of revenues to which the Company was entitled. After those revenues were determined, the FPSC would then determine the rate structure.

4. At the meeting(s), the customers were told that they were represented by the Office of Public Counsel who has served extensive discovery on SSU, reviewed the company's books and records and would take depositions of the Company's witnesses.

William Dave Denny
William Dave Denny

The foregoing instrument was acknowledged before me this 15th day of April, 1996, by William Dave Denny, who is personally known to me and who did take an oath.



Donna L. Henry
Donna L. Henry
Notary Public, State of Florida at Large
Commission No. CC212595
My Commission Expires: 7-6-96