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Southern States Utilities • 1000 Color Place • Apopka, FL 32703 • 407/880-0058

October 16, 1996

Ms. Blanca S. Bayo  
Florida Public Service Commission  
Director of Records & Reporting  
2540 Shumard Oak Blvd.  
Tallahassee, FL 32399-0850

Re: Docket No. 960878-WS

Dear Ms. Bayo:

Enclosed please find an original and fifteen copies of Southern States Utilities, Inc.'s Response to Order to Show Cause in the above-referenced docket. Also enclosed is a disk in Word Perfect 5.1 containing a copy of the aforesaid response.

Please acknowledge filing of these documents by date stamping the enclosed copy of this letter and returning it in the postage paid, self-addressed envelope provided.

Sincerely yours,

Matthew Feil  
Staff Attorney

Enclosures

RECEIVED  
 OCT 16 1996  
 COMMUNICATIONS SECTION  
 ACK \_\_\_\_\_  
 AFA \_\_\_\_\_  
 APP \_\_\_\_\_  
 CAF \_\_\_\_\_  
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WATER FOR FLORIDA'S **FUTURE**  
FPSC-RECORDS/REPORTING

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Proposed rate reduction	)	DOCKET NO. 960878-WS
to reflect a decrease in purchased	)	FILED: October 17, 1996
water and wastewater costs to	)	
to FPSC-regulated utilities, by	)	
Pasco County	)	

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RESPONSE OF SOUTHERN STATES UTILITIES, INC.  
TO COMMISSION ORDER TO SHOW CAUSE

Comes now Southern States Utilities, Inc. ("SSU"), by and through its undersigned counsel and in accordance with Order No. PSC-96-1226-FOF-WS, issued September 27, 1996, entitled "Order to Show Cause," files this Response to said Order. SSU asserts the Commission has no authority to take the action contemplated in the Order to Show Cause<sup>1</sup> and even if the Commission did have such authority, the Commission should not exercise that authority as to SSU. In support hereof, SSU states as follows:

1. The Commission has no legal authority under Chapter 367, Florida Statutes, to impose a rate reduction on utilities receiving water and/or wastewater service from Pasco County and thereby effect a pass-through decrease of Pasco County's rates.<sup>2</sup>

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<sup>1</sup> Having reviewed the transcript of the September 3, 1996 Agenda, the undersigned suggests that certain provisions of the Order to Show Cause are not supported by the Commission's vote as reflected in the transcript. Some of these disparities are less significant than others. In any event, neither the vote nor the Order to Show Cause contemplated agency action other than information gathering as to utilities who file a response.

<sup>2</sup> The Order to Show Cause appears to suggest that Orders Nos. 11026 and 20728, issued July 26, 1982, and February 13, 1989, respectively, are precedent for a Commission-imposed pass-through

2. Section 367.081(4), Florida Statutes, does not expressly grant the Commission the power to impose a pass-through decrease on its own motion. On the contrary, Section 367.081(4)(b), (c), and (d) expressly indicate it is the utility which uses the pass-through procedure -- subsections (b) and (d) through limitations on the timing of the utility's use of the procedure and subsection (c) by requiring an affirmation which "the utility shall file."<sup>3</sup> When the words of a statute are clear and unambiguous, it is an abrogation of legislative power to in any way extend, modify or limit the statute's express terms. E.g. Holly v. Auld, 450 So.2d 217 (Fla. 1984). Section 367.081(4) unambiguously withholds from the Commission the power to impose a pass-through decrease on the Commission's own motion. Therefore, by holding otherwise, the Commission would improperly abrogate the legislative intent.<sup>4</sup>

3. Even if an ambiguity is deemed present so resort to the rules of statutory construction is permitted, the rule of inclusio unius est exclusio alterius (the inclusion of one thing is the exclusion of the other) commends SSU's interpretation of Section decrease. However, neither of these orders support that suggestion. Both orders clearly state that a utility filing initiated the pass-through decrease under consideration.

<sup>3</sup> This specific language plainly gainsays the Commission staff's suggestion that the verified notice which initiates a pass-through procedure could come from a bulk provider or, by logical extension, any source. The entire pass-through filing scheme set by Section 367.081(4) and by rule unquestionably contemplate a utility's filing the pass-through.

<sup>4</sup> Further, when doubt exists as to the Commission's authority to exercise a certain power, the doubt must be resolved against the exercise of that power. Florida Bridge Co. v. Bevis, 363 So.2d 799 (Fla. 1978).

367.081(4). Throughout Chapter 367, the Legislature has expressly given the Commission power to undertake specific action "on its own motion," including, notably, the imposition of an index increase or decrease.<sup>5</sup> Conspicuously absent from Section 367.081(4) are words giving the Commission power to impose a pass-through "on its own motion." As the court succinctly held in Leisure Resorts, Inc. v. Frank J. Rooney, Inc., 654 So.2d 911, 914 (Fla. 1995),

When the legislature has used a term . . . in one section of the statute but omits it in another section of the same statute, we will not imply it where it has been excluded.

(Citations omitted.) Were the Commission to impose a pass-through decrease on its own motion, the Commission would impermissibly imply the authority to do so from Section 367.081(4), contrary to the inclusion unius rule and the holding in Leisure Resorts.

4. Also contrary to the plain meaning of Section 367.081(4) is the argument that a pass-through filing, unlike an index filing, can have no effect on a utility's achieved rate of return. Section 367.081(4)(c) specifically requires that "[b]efore implementing a change in rates under this subsection" (emphasis added) a utility must file an affirmation under oath that the rate change will not cause the utility to exceed the range of its last authorized rate of return. The "this subsection" referred to is undeniably subsection (4), and subsection (4) authorizes in distinct paragraphs (4)(a) and (4)(b) both index and pass-through filings. Thus, the Legislature recognized that both filings, pass-through

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<sup>5</sup> Sections 367.081(2)(a), 367.081(4)(a), 367.082(1), 367.0822(1), and 367.101(1), Florida Statutes.

and index alike, could cause a change in earnings.

5. The legislative history for the 1985 changes to Section 367.081(4), attached hereto as "Exhibit A," further evinces the intent behind this plain language in the statute. Under the heading "Effect of Proposed Changes" in both the legislative reports in Exhibit A appears the following:

If the PSC finds that the utility has exceeded its authorized rate of return after implementing a rate adjustment pursuant to the pass-through provisions, then it may order the utility to refund the difference to ratepayer, and adjust its rate accordingly.

Thus, the Legislature clearly recognized **all things do not remain equal** from the time a utility's rate of return is set to the time a pass-through or index occurs. Therefore, Section 367.081(4)(c) and (d) recognize that either a pass-through or index increase can cause a utility to overearn.<sup>6</sup> It stands to reason, then, that a pass-through or index decrease can cause reduced earning levels, again, because all things do not remain equal from the time a rate of return is set. The critical point for the instant purposes is this: pass-through expenses are not "revenue neutral."

6. Although the Order to Show Cause makes no reference to Section 367.0822, Florida Statutes, the Commission and Commission staff have invoked said provision as authority to impose a pass-through decrease in the course of this docket. SSU maintains that the Commission's authority to impose a pass-through decrease pursuant to Section 367.0822 is highly suspect, and, just as

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<sup>6</sup> By filing an index or pass-through, the utility voluntarily subjects itself to refunding any overearnings caused thereby. Section 367.081(4)(d), Florida Statutes.

important, the suggested manner of its use is clearly improper. Section 367.0822(1) provides as follows:

Upon petition or by its own motion, the commission may conduct limited proceedings to consider, and act upon, any matter within its jurisdiction, including any matter the resolution of which requires a utility to adjust its rates. The commission shall determine the issues to be considered during such a proceeding and may grant or deny any request to expand the scope of the proceeding to include other related matters. However, unless the issue of rate of return is specifically addressed in the limited proceeding, the commission shall not adjust rates if the effect of the adjustment would be to change the last authorized rate of return.

7. The Commission's reliance on Section 367.0822 is improper. The court in Forsythe v. Longboat Key Beach Erosion Control District, 604 So.2d 452, 455 (Fla. 1992), wrote, "It is axiomatic that all parts of a statute must be read together in order to achieve a consistent whole." (Emphasis in original; citations omitted.) The Commission's interpretation here clearly fails to achieve a **consistent** construction of chapter 367 as a whole. Rather than harmonizing two provisions in the same statute, the Commission's interpretation achieves an inconsistent construction where one provision (§ 367.0822) cancels out other provision(s) (§ 367.081(4)(b), (c) and (d)) in a manner which abrogates the legislative intent, identified hereinabove. To achieve the consistency required by Forsythe, the Commission should not assume authority to do by Section 367.0822 what Section 367.081(4)(b), (c) and (d) does not allow.

8. In Order No. PSC-92-1217-FOF-WS, issued October 27, 1992, the Commission denied Utilities, Inc. of Florida's request for an interim rate increase in a Section 367.0822 limited proceeding for

the PPW water and wastewater facilities (hereinafter the "PPW decision"). The Commission held, "The interim statute applies to full rate proceedings filed under Section 367.081, Florida Statutes, not limited proceedings." In other words, the Commission rejected the authority of Section 367.0822 as the basis to do what it thought Section 367.082 did not permit it to do. The instant case is no different. The Commission should refrain from using Section 367.0822 as authority to do what Section 367.081(4)(b), (c) and (d) does not permit the Commission to do on its own motion.

9. Even assuming the Commission has authority to impose a pass-through decrease on authority of Section 367.0822, the Commission must accept all ramifications of a limited proceeding, including but not limited to: (1) if no interim rate increase is available, nor should an interim decrease (or holding revenues subject to refund) be imposed;<sup>7</sup> (2) rate case expense should be recoverable;<sup>8</sup> (3) a rate change should not be permitted if the "effect of the adjustment would be to change the last authorized rate of return"; and (4) the utility must have the opportunity to raise additional issues. In other words, the Commission cannot invoke its authority under Section 367.0822 to permit it to order a rate adjustment utilizing the procedures of Section 367.081(4).

10. If the Commission votes to initiate a limited proceeding

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<sup>7</sup> Although not proposed in the Order to Show Cause, staff has suggested that utilities hold the difference in expense resulting from the Pasco County rate decrease subject to refund. Under the PPW decision, SSU submits this would be improper.

<sup>8</sup> E.g. Order PSC-96-0870-FOF-WU, issued July 2, 1996.



for the purpose of imposing a pass-through rate reduction for Pasco County's rates, SSU intends to raise as additional issues in this proceeding, at a minimum, the wholesale water and wastewater rate increases SSU has or will soon experience, including those of Orange County, Charlotte County, and Astor Park Water Association. SSU further intends to request retroactive application of these rate increases if the Commission votes that the Pasco County pass-through decrease will be applied retroactive to April 1996. Further, SSU intends to request recovery of all of its rate case expense, including cost of copies, mailing, attorney's fees, etc.

11. The Commission is without authority to make rates effective for service rendered prior to the effective date of Commission action authorizing the change in rates. Gulf Power Co. v. Cresse, 410 So.2d 492, 493-94 (Fla. 1982).<sup>9</sup> Nothing in Section 367.081(4) authorizes deviation from this rule of law prohibiting retroactive ratemaking.<sup>10</sup> Moreover, if Section 367.081(4) is to be interpreted to allow retroactive application of a pass-through decrease, it should also, under the mutuality doctrine, be interpreted to allow retroactive application of pass-through and

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<sup>9</sup> In GTE Florida, Inc. v. Clark, 668 So.2d 971 (Fla. 1996), the Florida Supreme Court held that it was not retroactive rate-making for the Commission to authorize a utility surcharge for expenses properly recoverable, but excluded from rates, as a result of an erroneous Commission rate order. The essential predicate for the GTE ruling, an erroneous Commission order, is not present in the instant case.

<sup>10</sup> The Commission did not impose a retroactive effective date for the voluntary pass-through reductions filed by the utilities in Orders Nos. 11026 and 20728, issued July 26, 1982, and February 13, 1989.



index increases. See Smith v. State, 606 So.2d 427, 428 (Fla. 1st DCA 1992). As to SSU in particular, the proposed retroactive effective date further violates the concept of mutuality. SSU could not have filed a pass-through until after August 2, 1996, i.e. 12 months after the filing of SSU's 1995 rate case. Section 367.081(4)(b), Florida Statutes. Yet, the Order to Show Cause proposes a rate decrease effective date before August 2, 1996.

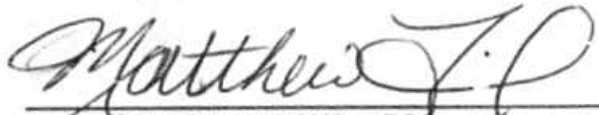
12. SSU has not filed herewith the information required by Rule 25-30.425(1)(a) through (f) for several reasons. SSU does not believe the Commission's vote mandated such a filing. Rather, the Commission's vote was that the affected utilities should file whatever the utilities deemed appropriate for Commission consideration, including a calculation of rates or the effect of the proposed reduction on rate of return if pertinent to the utility's case. As to SSU specifically, the following other considerations dictate against a pass-through decrease.

a. SSU purchases water for its Zephyr Shores and Palm Terrace plants and wastewater service for its Zephyr Shores plant from Pasco County. A comparison of the purchased water and wastewater costs allowed in Docket No. 950495-WS for these plants (for 1996 test year) with SSU's actual 1995 costs as adjusted for Pasco County's rate decrease shows that SSU should receive a rate increase to fully recover its costs for purchasing Pasco County service at Pasco County's reduced rate. See attached Exhibit B.

b. SSU's rate of return is set on a company basis, not

a service area basis. Because of the modified cap band rate structure approved in Docket No. 950495-WS, rate of return cannot be properly examined on a service area basis. As set forth in the attached affidavit of Mr. Forrest L. Ludsen, Exhibit C hereto, SSU's forbearance of the pass-through decrease contemplated in the Order to Show Cause will not cause SSU to earn outside the range of its authorized rate of return.

WHEREFORE, in consideration of the foregoing, Southern States Utilities, Inc. hereby requests the Commission not impose a rate reduction to effect a pass-through decrease in rates for water and wastewater service purchased from Pasco County.



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

REVISED: June 12, 1985BILL NO. SB 175DATE: April 18, 1985Page 1

## SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION	DATE
1. <u>Branning</u>	<u>Coin</u>	1. <u>COM</u>	<u>Fav. v/Amend.</u>	
2. <u>Balzer NS</u>	<u>Burnside NS</u>	2. <u>BCCA</u>	<u>Favorable</u>	
3. _____	_____	3. _____	_____	

SUBJECT: Water and Sewer Systems

BILL NO. AND SPONSOR: SB 175 by Senator McPherson

1. SUMMARY:A. Present Situation:

Chapter 367, Florida Statutes, provides for the regulation of certain water and sewer systems by the Public Service Commission (PSC). Prior to the issuance of a permit by the Department of Environmental Regulation (DER) for the construction of a new water and sewer facility, the utility must obtain a certificate from the PSC authorizing it to provide service.

Section 367.081(4)(a), Florida Statutes, 1984 Supplement, establishes a procedure by which water and sewer utilities may implement a rate adjustment based on a price index for major categories of operating costs incurred by water and sewer utilities without action by the PSC. Section 367.081(4)(b), Florida Statutes, establishes a procedure by which utilities can automatically adjust their rates based on a pass-through of certain costs.

A water and sewer utility is limited to two adjustments in a 12-month period and the use of the indexing and pass-through provisions for such adjustments are limited to the most recent index calculation and pass-through costs dating back 12 months from the date of filing. When applications under the indexing and pass-through provisions are filed, the filing is considered as one rate adjustment. If, within 24 months of the rate adjustment, the PSC finds that the utility exceeded its authorized rate of return, it may order the utility to refund the unauthorized return to ratepayers.

Part VI of section 403.853, Florida Statutes, 1984 Supplement, requires DER to adopt and enforce regulations relating to the testing of public water supplies for certain contaminants. The department has required by rule that such testing be done by certain certified laboratories meeting certain criteria every three years.

B. Effect of Proposed Changes:

The bill requires that each utility subject to the commission's jurisdiction possess a current certificate.

The bill allows water and sewer utilities to use the automatic pass-through provisions of section 367.081(4), Florida Statutes, 1984 Supplement, to recover from ratepayers the costs of such water testing. If the PSC finds that the utility has exceeded its authorized rate of return after implementing a rate adjustment pursuant to the pass-through provisions, the commission may order the utility to refund the unauthorized return to ratepayers and to adjust its rates accordingly. Such a

REVISED:     June 12, 1985    BILL NO.     SB 175    DATE:     April 18, 1985    Page     2    

determination must be made by the PSC within 24 months after the rates have been adjusted by the utility using the pass-through provisions.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

There are 5 laboratories in Florida which meet DER's criteria to do water testing required by DER. The cost of initial tests is between \$760 to \$1,100. If the results are negative, no more tests, or costs, are necessary. If the results are positive, additional tests, and costs, are necessary. It is assumed that the costs of the tests would be passed onto the ratepayers through an automatic rate adjustment.

To the extent certain water and sewer utilities subject to the PSC's jurisdiction are not in possession of a current certificate, those utilities will incur the cost of an application fee and annual regulatory assessment fees. It is assumed these costs will be passed on to the ratepayers in the form of higher rates.

B. Government:

According to PSC staff, the requirement that certain utilities under its jurisdiction which do not possess current certificates obtain one will result in increased revenue to the PSC in the form of application fees and annual regulatory assessment fees.

III. COMMENTS:

The provisions of the chapter do not provide for the expiration or renewal of a certificate, but do provide for the revocation or suspension of a certificate. It would appear more appropriate to require water and sewer utilities under the jurisdiction of the PSC to possess a "valid" certificate rather than a "current" certificate.

SB 175 was ordered enrolled on May 27, 1985.

IV. AMENDMENTS:

§1 by Commerce: Clarifies the time period in which the PSC may make a determination as to a water and sewer utility's overearnings as a result of automatic rate adjustments.

REVISED: June 11, 1985BILL NO. SB 175DATE: March 28, 1985Page 1

## SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

COPY

ANALYST	STAFF DIRECTOR
1. <u>Branning</u>	<u>Cain</u>
2. _____	_____
3. _____	_____

REFERENCE	ACTION
1. <u>COM</u>	<u>Fav. w/amend.</u>
2. <u>ECCA</u>	_____
3. _____	_____

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## SUBJECT:

Water and Sewer Systems

## BILL NO. AND SPONSOR:

SB 175 by  
 Senator McPherson  
 (As passed by the Legislature)

1. SUMMARY:

## A. Present Situation:

Chapter 367, Florida Statutes, provides for the regulation of certain water and sewer systems by the Public Service Commission (PSC). Prior to the issuance of a permit by the Department of Environmental Regulation for the construction of a new water and sewer facility, the utility must obtain a certificate from the PSC authorizing it to provide service. The certificate defines the utility's service territory and can be subsequently amended to extend the utility's service territory. Section 367.061, F.S., establishes the procedures by which a water and sewer utility can extend its service. A utility desiring to extend its service territory must meet certain notice requirements. The utility may make an application to the PSC to amend its certificate providing for such extension at any time within one year following notice.

Section 367.081(4), F.S., 1984 Supp., establishes a procedure by which a water and sewer utility may implement a rate adjustment based on a price index for major categories of operating costs incurred by water and sewer utilities without further action by the PSC. Water and sewer utilities can automatically adjust their rates based on an annual indexing of certain costs and a pass-through of the following:

- (1) The cost of purchasing services from a governmental agency or other water and sewer utility regulated by the PSC;
- (2) The cost of purchasing electric power; or
- (3) The amount of ad valorem tax assessed against its property.

A water and sewer utility is limited to two such adjustments in a 12-month period. The use of the indexing and pass-through provisions for rate adjustments are limited to the most recent index calculation and pass-through costs dating back only 12 months from the date of filing. When applications under both the indexing and pass-through provisions are filed, the filing is considered as one rate adjustment. If, within 24 months of the rate adjustment, the PSC finds that the utility exceeded its authorized rate of return, it may order the utility to refund the difference to the ratepayers.

REVISED: June 11, 1985BILL NO. SB 175DATE: March 28, 1985Page 2**B. Effect of Proposed Changes:**

Chapter 367, P.S., currently requires a certificate from the PSC for new water and sewer facilities under its jurisdiction. Other provisions of the chapter seem to imply that all water and sewer utilities under its PSC's jurisdiction must have certificates. This bill specifically requires that all such water and sewer utilities must have a current certificate.

Section 403.853, F.S., 1984 Supp., permits the Department of Environmental Regulation to require the testing of public water supplies for certain contaminants. Testing for such contaminants is required for community water supply systems at least every 3 years. The department has promulgated rules to require such testing to be done by certain certified laboratories. This bill allows water and sewer utilities to use the automatic pass-through provisions of s. 367.061, F.S., 1984 Supp., to recover from the ratepayers the costs of such water testing. If the PSC finds that the utility has exceeded its authorized rate of return after implementing a rate adjustment pursuant to the pass-through provisions, then it may order the utility to refund the difference to the ratepayers and adjust its rates accordingly. Such a determination must be made by the PSC within 24 months after the rates have been adjusted by the utility using the pass-through provisions.

**II. ECONOMIC IMPACT AND FISCAL NOTE:****A. Public:**

Currently, there are only 5 laboratories in the state which have been certified to do the water testing which the Department of Environmental Regulation requires. The costs associated with such tests range from \$760 to \$1,100 statewide. These figures are generally only for the initial test and where the findings are negative and no further tests are required at that time. Additional tests, and therefore costs, are necessary when initial test results are positive. The costs of the tests would be amortized and passed onto the ratepayers through an automatic rate adjustment. If, however, costs for any water quality tests have already been included into a utility's rate, then the pass-through provisions cannot be used.

It is not known at this time how many water and sewer utilities that are subject to the PSC's jurisdiction do not currently possess a certificate from the PSC. The bill would require such utilities to have a current certificate.

**D. Government:**

No significant impact.

**III. COMMENTS:**

Technical errors - none noted.

**IV. AMENDMENTS:**

#1 by Commerce: Clarifies the time period in which the PSC may make a determination as to a water and sewer utility's overearnings as a result of automatic rate adjustments. No additional impact.



TER 85-84

CHAPTER 85-84

LAWS OF FLORIDA

CHAPTER 85-84

Approved by the Governor June 10, 1985.

Filed in Office Secretary of State June 10, 1985.

CHAPTER 85-85

Senate Bill No. 175

(1985)

An act relating to ~~water and sewer~~ systems; amending s. 367.031, F.S.; requiring utilities to possess a current certificate; amending s. 367.061, F.S.; making application for certificate extension mandatory; amending s. 367.081, F.S.; providing for automatic increase of approved rates in certain circumstances; providing for refunds and rate adjustments in certain circumstances; amending s. 367.171, F.S.; providing for application for and issuance of a certificate when ch. 367, F.S., becomes applicable to a county; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 367.031, Florida Statutes, is amended to read:

367.031 Certificate.--Prior to the issuance to a utility of a permit by the Department of Environmental Regulation for the construction of a new water or sewer facility, the utility shall obtain a certificate authorizing it to provide service. Each utility subject to the commission's jurisdiction shall possess a current certificate.

Section 2. Subsection (4) of section 367.061, Florida Statutes, 1984 Supplement, is amended to read:

367.061 Extension of certificate.--

(4) An application to amend a certificate shall may be made at any time within 1 year following notice as required in subsection (3), unless for good cause the commission extends such time for application. The application shall contain a description of all additional territory served. The commission shall issue an amended certificate describing all territory which it had theretofore been authorized to serve, together with the additional territory served by such extension.

Section 3. Paragraphs (b) and (d) of subsection (4) of section 367.081, Florida Statutes, 1984 Supplement, are amended to read:

367.081 Rates; procedure for fixing and changing.--

(4)

(b) The approved rates of any utility which receives all or any portion of its utility service from a governmental agency or from a water or sewer utility regulated by the commission and which redistributes that service to its utility customers shall be automatically increased or decreased without hearing, upon verified notice to the commission 30 days prior to its implementation of the increase or decrease that the rates charged by the governmental agency or other utility have changed. The approved rates of any

utility which is subject to an increase or decrease in the rates that it is charged for electric power or the amount of ad valorem taxes assessed against its property shall be increased or decreased by the utility, without action by the commission, upon verified notice to the commission 30 days prior to its implementation of the increase or decrease that the rates charged by the supplier of the electric power or the taxes imposed by the governmental body have changed. The new rates authorized shall reflect the amount of the change of the ad valorem taxes or rates imposed upon the utility by the governmental agency, other utility, or supplier of electric power. The approved rates of any utility shall be automatically increased, without hearing, upon verified notice, to the commission 30 days prior to implementation of the increase, that costs have been incurred for water quality testing required by the Department of Environmental Regulation. The new rates authorized shall reflect, on an amortized basis, the cost of, or the amount of change in the cost of, required water quality testing performed by laboratories approved by the Department of Environmental Regulation for that purpose. The new rates, however, shall not reflect the costs of any required water quality testing already included in a utility's rates. A utility may not use this procedure to increase its rates as a result of water quality testing or an increase in the cost of purchased water services, sewer services, or electric power or in assessed ad valorem taxes, which increase was initiated more than 12 months before the filing by the utility. The provisions of this subsection do not prevent a utility from seeking a change in rates pursuant to the provisions of subsection (2).

(d) If, within 15 24 months after the filing of a utility's annual report required by s. 367.171 of an adjustment in the rates as authorized by this subsection, the commission finds that the utility exceeded did thereby exceed the range of its last authorized rate of return after an adjustment in rates as authorized by this subsection implemented within the year for which the report was filed, or implemented in the preceding year, the commission it may order the utility to refund the difference to the ratepayers and adjust rates accordingly. This provision shall not be construed to require a bond or corporate undertaking not otherwise required.

Section 4. Paragraph (b) of subsection (2) of section 367.171, Florida Statutes, is amended to read:

367.171 Effectiveness of this chapter.--

(2)

(b) On the day this chapter becomes applicable to any county, any utility engaged in the operation or construction of a system shall be entitled to receive a certificate for the area served by such utility on the day this chapter becomes applicable to it, if, within 90 days after the day this chapter becomes applicable to it, the utility shall make makes application for a certificate by filing with the commission:

1. A map of its existing system or system under construction;
2. A description of the area served by the system; and
3. A tariff listing all rates and charges and such other financial information as may be required by the commission.

## SUMMARY OF PURCHASED WATER AND SEWER ADJUSTMENT FOR PASCO COUNTY PLANTS


	(1)	(2)	(3)	(4)	(5)
PURCHASED WATER AND SEWER EXPENSE					
Line No.	Description	Commission Approved Per Docket 950495-WS	Actual 1995	1995 Actuals Adjusted To Reflect New Pasco County Bulk Rates	Increase/Decrease To Approved Expense (Col (4) - Col (2))
<u>Purchase Water</u>					
(1)	Palm Terrace	\$ 101,400	\$ 133,952	\$ 126,414	\$ 25,014
(2)	Zephyr Shores	\$ 35,376	\$ 23,315	\$ 24,005	\$ (11,371)
	TOTAL WATER	\$ 136,776	\$ 157,268	\$ 150,419	\$ 13,643
<u>Purchased Sewer</u>					
(4)	Zephyr Shores	\$ 19,288	\$ 30,476	\$ 23,728	\$ 4,440
(5)	TOTAL SEWER	\$ 19,288	\$ 30,476	\$ 23,728	\$ 4,440
(6)	TOTAL WATER AND SEWER				\$ 18,083

State of Florida     )  
County of Orange    )  
\_\_\_\_\_          )

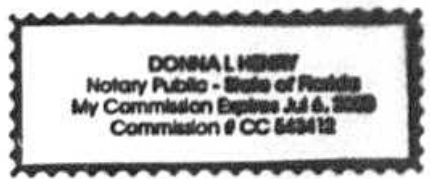
**AFFIRMATION**

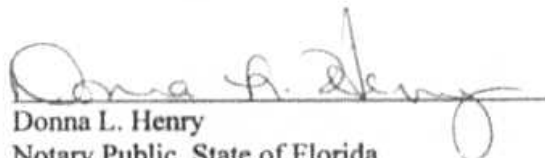
I, Forrest L. Ludsen, Vice President Finance and Administration for Southern States Utilities, Inc. ("SSU"), hereby affirm that the figures and calculations in Attachment 1 hereto are accurate and that forbearance of the pass-through decrease referenced in Commission Order No. PSC-96-1226-FOF-WS, issued September 27, 1996, in Docket No. 960878-WS, will not cause SSU to exceed the range of its last authorized rate of return, which is 10.88% to 12.88%.

This affirmation is made pursuant to Southern States Utilities, Inc.'s Response to the Commission Order to Show Cause, Order No. PSC-96-1226-FOF-WS, issued September 27, 1996, in Docket No. 960878-WS.

  
Forrest L. Ludsen  
Vice President Finance and Administration

Sworn to and subscribed before me this 16th day of October, 1996, by Forrest L. Ludsen, Vice President Finance and Administration of Southern States Utilities, Inc., who is personally known to me.



  
Donna L. Henry  
Notary Public, State of Florida

SUMMARY OF PURCHASED WATER AND SEWER ADJUSTMENT FOR PASCO COUNTY PLANTS

Line No.	Description	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(11)
		PURCHASED WATER AND SEWER EXPENSE											
		Commission Approved Per Docket 950495-WS	Old Pasco Bulk Rates	1995 Actuals New Pasco Bulk Rates	Decrease in Expense New Vs. Old Rates	Increase in Expense New Pasco Rates Vs. Commission Approved in Docket 950495-WS (Col (4) - Col (2))							
<b>Purchase Water</b>													
(1)	Palm Terrace	\$ 101,400	\$ 133,952	\$ 126,414	\$ (7,538)	\$ 25,014							
(2)	Zephyr Shores	\$ 25,379	\$ 23,315	\$ 24,005	\$ 690	\$ (11,371)							
	<b>TOTAL WATER</b>	<b>\$ 126,779</b>	<b>\$ 157,268</b>	<b>\$ 150,419</b>	<b>\$ (6,849)</b>	<b>\$ 13,643</b>							
<b>Purchased Sewer</b>													
(4)	Zephyr Shores	\$ 19,288	\$ 30,478	\$ 23,728	\$ (6,748)	\$ 4,440							
(5)	<b>TOTAL SEWER</b>	<b>\$ 19,288</b>	<b>\$ 30,478</b>	<b>\$ 23,728</b>	<b>\$ (6,748)</b>	<b>\$ 4,440</b>							
(6)	<b>TOTAL WATER AND SEWER</b>	<b>\$ 146,067</b>	<b>\$ 187,746</b>	<b>\$ 174,147</b>	<b>\$ (13,597)</b>	<b>\$ 18,083</b>							

IMPACT OF PURCHASED WATER ADJUSTMENT ON RATE OF RETURN

Line No.	Description	COMMISSION ORDERED PER DOCKET 950495-WS ACHIEVED UNDER CAPBAND RATES											FPSC Approved Range of Return on Equity
		Revenue	Net Income	Rate Base	Ordered Returns		Purchased Water & Sewer Expense Adjustment	Net Income Impact Col (6) X (-1) -38575	Returns With Pasco Decrease				
					Rate of Return	Return on Equity			Adjusted Net Income	Achieved Rate of Return	Achieved Return on Equity		
<b>Purchase Water</b>													
(1)	Palm Terrace	320,810	32,981	214,589	15.37%	25.49%	(7,538)	4,830	37,611	17.53%	31.02%	10.88%-12.88%	
(2)	Zephyr Shores	88,699	(2,394)	148,841	-2.04%	-19.72%	690	(424)	(3,417)	-2.33%	-20.47%	10.88%-12.88%	
(3)	Palm Terrace Rate Band (Note 1)	787,929	135,323	1,183,309	11.44%	15.28%	(7,538)	4,830	139,954	11.83%	16.25%	10.88%-12.88%	
	<b>ALL FPSC WATER PLANTS</b>	<b>33,399,855</b>	<b>7,847,805</b>	<b>78,341,853</b>	<b>9.94%</b>	<b>11.38%</b>	<b>(6,849)</b>	<b>4,207</b>	<b>7,851,812</b>	<b>9.95%</b>	<b>11.41%</b>	<b>10.88%-12.88%</b>	
<b>Purchased Sewer</b>													
(4)	Zephyr Shores	159,580	23,159	323,906	7.15%	4.15%	(6,748)	4,145	27,304	8.43%	7.47%	10.88%-12.88%	
(5)	<b>ALL FPSC SEWER PLANTS</b>	<b>24,714,777</b>	<b>5,175,541</b>	<b>52,042,551</b>	<b>9.95%</b>	<b>11.38%</b>	<b>(6,748)</b>	<b>4,145</b>	<b>5,180,685</b>	<b>9.95%</b>	<b>11.43%</b>	<b>10.88%-12.88%</b>	
(7)	<b>ALL FPSC WATER AND SEWER</b>	<b>58,114,632</b>	<b>13,024,146</b>	<b>130,384,404</b>	<b>9.94%</b>	<b>11.38%</b>	<b>(13,597)</b>	<b>8,352</b>	<b>13,032,497</b>	<b>9.95%</b>	<b>11.42%</b>	<b>10.88%-12.88%</b>	

Note 1: Includes Ordered financial information for Oakwood, Imperial Terrace, Palm Terrace, Kingswood, Piccola Island, Dastwyler Shores, Fern Park, Oak Forest, Salt Springs. All these system make up the palm terrace uniform rate band of \$36.15.