

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

ORIGINAL
FILE COPY

In Re: 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)
(Deltona); Hernando County by SPRING HILL)
UTILITIES (Deltona); and Volusia County by)
DELTONA LAKES UTILITIES (Deltona))
_____)

DOCKET NO. 920199-WS
FILED: July 16, 1997

PETITION OF SENATOR GINNY BROWN-WAITE
AND MORTY MILLER TO INTERVENE
AND MOTION TO COMPEL RATE
REDUCTIONS AND RATE REFUNDS AND FOR MAXIMUM PENALTY

Senator Ginny Brown-Waite and Morty Miller, by and through their undersigned attorney, pursuant to Section 120.53, Florida Statutes and Rules 25-22.036(7)(a) and 25-22.039, Florida Administrative Code, petition the Florida Public Service Commission ("Commission") for leave to intervene in the above-styled docket and move the Commission for an order compelling Southern States Utilities, Inc. ("SSU") to: (1) reduce its rates at its Spring Hill systems to "modified stand-

ACK _____ alone" levels as previously ordered by this Commission; (2) to make refunds to its customers at
AFA 4
APP 1 Spring Hill for the difference between the "uniform rates" previously approved by the
CAF _____ Commission, but reversed by the First District Court of Appeal, and the modified stand-alone
CMU _____
CTR _____ rates now ordered by the Commission; and (3) penalizing SSU to the maximum extent possible
EAG _____
LEG 1 for its failure to implement modified stand-alone rates at Spring Hill. In support of the petition
LIN 5 and motions, Senator Ginny Brown-Waite and Morty Miller state:

OPC _____
RCH _____
SEC 1
WAS Willis
OTH _____

DOCUMENT NUMBER-DATE

07153 JUL 16 5 6551

FPSC-REGISTRATION/REPORTING

Background

By Order No. PSC-93-0423-FOF-WS issued in this docket on March 22, 1993, the Commission approved uniform rates for some 127 SSU water and wastewater systems throughout Florida. The uniform rate structure charged all water and wastewater customers, respectively, the same rates irrespective of what the stand-alone revenue requirement was at each of the individual, non-connected systems. Consequently, the customers of some systems were forced to pay higher rates than dictated by their cost-of-service so that the customers of other systems could receive subsidies and enjoy rates at a lower level than if they were required to bear the full costs of the service being provided to them. Under uniform rates the residents of Spring Hill were forced to pay subsidies of approximately \$1.8 million annually based on the then current number of customers and their consumption.

Shortly after the entry of the March 22, 1993 rate order, Senator Brown-Waite and the Spring Hill Civic Association, Inc., among others, sought intervention in the case arguing that they had been given no notice that they would be subject to paying rate subsidies to the customers of other systems through uniform rates and, further, that such rates were unlawful. The interventions were denied by the Commission as being untimely by Order No. PSC-93-1598-FOF-WS.

Ultimately, on April 6, 1995, the uniform rates were found unlawful by the First District Court of Appeal in the case of Citrus County v. Southern States Utilities, Inc., 656 So. 2d 1307 (1995) and the March 22, 1993 rate order was reversed. On October 19, 1995, the Commission issued its Order No. PSC-95-1292-FOF-WS, Order Complying with Mandate, Requiring Refund, and Disposing of Joint Petition, which order established a "modified stand-alone" rate structure

for SSU and ordered it to pay refunds with interest to those customers who had been overcharged by uniform rates during the pendency of the appeal. This Order establishing the modified stand-alone rates was applicable to all 127 systems involved in Docket No. 920199, including the Spring Hill systems. SSU did not implement the provisions of Order No. PSC-95-1292-FOF-WS because it sought reconsideration of that order. However, prior to the Commission considering SSU's motion for reconsideration, it granted SSU an interim rate increase in its new rate case in Docket No. 950495-WS. This interim increase, approved in Order No. PSC-96-0125-FOF-WS, was also based on a "modified stand-alone" rate structure containing "subsidies" not related to cost-of-service. SSU implemented the modified stand-alone interim rates approved in the new rate case for the systems included in that case, but because the Spring Hill systems were not included in the new rate case, SSU continued charging the customers of those systems the uniform rates and continued collecting the forced subsidies inherent in them. SSU did not implement the modified stand-alone rates ordered in this docket for Spring Hill, but, rather, simply continued charging the higher, illegal rates and "pocketed" the rate subsidy portion of the Spring Hill rates since there were no longer any other of its systems being charged uniform rates and, thus, capable of receiving the now unlawful subsidies.

SSU's motion for reconsideration of the Order Complying with Mandate, Requiring Refund, and Disposing of Joint Petition was denied at the Commission's February 20, 1996 Agenda Conference. However, the Florida Supreme Court's decision in GTE, Inc. v. Clark, 668 So. 2d 971 (1996) was published prior to the order memorializing the Commission's denial of SSU's motion for reconsideration. Briefs were filed on the impact of Clark on the SSU case and a number of other customer organizations sought intervention in the docket.

On August 14, 1996 the Commission issued Order No. PSC-96-1046-FOF-WS, Final Order On Remand And Requiring Refund, denying the petitions to intervene of Senator Brown-Waite and the others and ordering SSU to calculate refunds based on the difference between the uniform rates and the modified stand-alone rates from the date the uniform rate was implemented until the date the interim rate in Docket No. 950495-WS was implemented and to make those refunds without charging the recipients of the subsidies rate surcharges. SSU sought review of the refund provision at the First District Court of Appeal and the Commission, on October 28, 1996, issued Order No. PSC-96-1311-FOF-WS, Order Granting Stay of Order No. PSC-96-1046-FOF-WS, staying the refund requirement pending the outcome of the appeal.

Through apparent oversight on the part of the Commission, SSU was allowed to continue charging the uniform rates at Spring Hill in violation of its earlier Order until the Office of the Public Counsel and Senator Brown-Waite sought to have the Commission correct the oversight by the elimination of the uniform rates at Spring Hill. On November 12, 1996 the Office of Public Counsel filed a Motion for Reconsideration and Clarification or, in the Alternative, Motion to Modify Stay, which essentially sought an order of the Commission compelling SSU to begin charging modified stand-alone rates at Spring Hill and to cease charging the unlawful uniform rates there. The Commission, by its entry of Order No. PSC-97-0175-FOF-WS, on February 14, 1997, specifically lifted the stay with respect to the issue of rates at Spring Hill and directed that SSU should cease the uniform rates and begin charging the lower rates, stating:

SSU shall implement the modified stand-alone rate structure for the Spring Hill customers consistent with Orders Nos. PSC-95-1292-FOF-WS and PSC-96-1046-FOF-WS.

SSU sought appeal of the stay issue at the First District Court of Appeal, which denied SSU any relief. Thus, there was an unstayed provision of an outstanding Commission order directing SSU to lower rates at Spring Hill. SSU ignored the Commission's order and never implemented the modified stand-alone rate structure at Spring Hill pending the outcome of the appeal of the Refund Order. Consistent with its earlier practice, the utility continued charging the illegal rates and continued pocketing the subsidy overcharges along with the regulatory assessment fees it was collecting from the Spring Hill customers there and consistently refusing to remit to Hernando County.

On June 17, 1997 the First District Court of Appeal reversed that portion of the Commission's order requiring that SSU pay for the refunds as opposed to being allowed to surcharge the other customers who "underpaid under the erroneously approved uniform rates" and remanded the case for further proceedings on the issue of surcharges. The Court also directed the Commission to reconsider its decision denying intervention to the three customer groups that had sought late intervention in the case. The First District has since issued its Mandate in that case.

Petition to Intervene

1. The name and address of the petitioners are:

Senator Ginny Brown-Waite
10th District
The Florida Senate
Hernando County Government Complex
20 North Main Street, Room 200
Brooksville, Florida 34601

And

Morty Miller
1117 Lodge Circle
Spring Hill, Florida 34606

Documents relating to this proceeding should be served on:

Michael B. Twomey
Post Office Box 5256
Tallahassee, Florida 32314-5256
Telephone: (850) 421-9530
Fax: (850) 421-8543

2. Senator Ginny Brown-Waite was a customer of SSU at her former residence in Spring Hill until October, 1994. She was a SSU customer and paid the uniform rates approved by this Commission and is entitled to a refund of the difference between the modified stand-alone rates now ordered for Spring Hill and the uniform rates she was forced to pay.

3. Morty Miller, a former President of the Spring Hill Civic Association, Inc., resides in Spring Hill and has continuously been a customer of SSU since the uniform rates were first approved in March, 1993. Morty Miller is entitled to receive refunds and appropriate interest for the difference between the uniform rates and the modified stand-alone rates for the entire period beginning March 22, 1993 until such time as SSU implements the modified stand-alone rates, which it has not done to date. Morty Miller also has a substantial interest in seeing that the Commission carry through on the provisions of its order requiring SSU to implement modified stand-alone rates at Spring Hill by compelling the utility to begin charging those rates.

4. On remand, the First District Court of Appeal stated that Commission erred in denying the customer petitions to intervene as "untimely in the circumstances of this case, where the issue of a potential surcharge and the applicability of the Clark case did not arise until the

remand proceeding.” The Court directed this Commission to reconsider its decision denying the intervention of Keystone Heights, Marion Oaks Civic Association, and Burnt Store Marina and “to consider any petitions for intervention that may be filed by other such groups subject to a potential surcharge in this case.”

5. It should be clear that Senator Brown-Waite and Morty Miller have a substantial interest that will be determined by the Commission in this case in connection with the surcharge issue. Simply stated, their ability to receive the refund of the uniform rate surcharges they were forced to pay, now depends entirely upon the Commission imposing surcharges on the customer groups “who underpaid for services they received under the uniform rates.” Clearly, both Senator Brown-Waite and Morty Miller are persons whose substantial interests will be affected by the Commission in this Section 120.57(1), F.S. proceeding and who are entitled to participate as “parties.” The Commission should grant their petition to intervene.

Motion To Compel Refunds Through Customer Surcharges

6. In reversing the Commission’s decision precluding SSU from recouping surcharges from customers who underpaid because of the entry of the erroneous order imposing uniform rates, the First District Court of Appeal made no suggestion that refunds were still not due to the customers forced to overpay by operation of the uniform rates. Quite to the contrary, the First District quoted with approval the Florida Supreme Court’s statement in Clark that

“equity applies to both utilities and ratepayers when an erroneous rate order is entered” and “[i]t would clearly be inequitable for either utilities or ratepayers to benefit, thereby receiving a windfall, from an erroneous PSC order.”

668 So. 2d at 973. The First District continued, squarely addressing the fact that one group of customers should not be allowed a financial advantage at the expense of another group, saying:

Contrary to this principle, the PSC in this case has allowed those customers who underpaid for services they received under the uniform rates to benefit from its erroneous order adopting uniform rates. As a legal position, this will not hold water.

7. It is clear that the First District intends that this Commission once again order SSU to make refunds to all the customers overcharged by the uniform rates, but that, this time, it allow the utility to recoup the refund monies from those customers who underpaid for their service through the erroneous uniform rates. Senator Brown-Waite, Morty Miller, the other customers of Spring Hill, and all other customers who were forced to pay rate subsidies through the operation of the uniform rates, are entitled to receive refunds paid for by surcharges paid for by the other SSU customers who underpaid under the uniform rates. The period for which surcharges should be applicable shall only be from the initial date of the uniform rates on March 22, 1993 to the date that interim rates were placed in effect in Docket No. 950495-WS.

8. The First District Court of Appeal has issued its Mandate to the Commission in connection with the reversal of the Refund Order. Without counting the "uniform rate" charges of the interim rates approved in Docket No. 920199-WS, uniform rates have been in affect for over four and one-quarter years at Spring Hill, with total overcharges and compound interest now approaching \$8 million. The Commission should act with great alacrity in complying with the First District's Mandate by approving the necessary customer surcharges and by ordering SSU to make the refunds within 90 days of the Commission's order.

Motion To Compel Refunds To Be Financed Directly By SSU

9. By Order No. PSC-96-0125-FOF-WS entered in Docket No. 950495-WS on January 25, 1996, the Commission approved interim rates for the systems included in that docket. As of the effective date of those interim rates, no other SSU system's customers continued to

wrongfully benefit from the subsidies still being paid by Spring Hill customers of SSU. Rather, SSU simply pocketed the excess and illegal overcharges represented by the difference between the uniform rates and the modified stand-alone rates ordered by this Commission for Spring Hill, but never implemented by SSU. SSU, and SSU alone, has wrongfully benefitted from the uniform rates charged during this period and the Commission should order the utility to make the necessary refunds, with appropriate interest, within 90 days of the Commission order approving the refunds. No other customer group has benefitted from the uniform rate charges during this period, so no customer surcharges are appropriate to finance the refunds. The SSU customers at Spring Hill have been illegally deprived of their money for years and they should have those overcharges returned to them through refund checks within 90 days of the Commission order compelling the refunds.

Motion To Compel Implementation Of Modified Stand-Alone Rates

10. Notwithstanding Hernando County's attempted assertion of regulatory authority over SSU within the boundaries of that county, this Commission has retained certain limited jurisdiction over SSU's facilities within Hernando County by virtue of the "pending case" provisions of Section 367.171(5), F.S. Consistent with that continuing authority, this Commission has, on at least two occasions, ordered SSU to implement modified stand-alone rates at its Spring Hill facilities. Most recently, in Order No. PSC-97-0175-FOF-WS, issued February 14, 1997, this Commission stated, at pages 3 and 4:

The Citrus County decision stated that uniform rates could not lawfully be approved without a finding that SSU's facilities and land were functionally related. We chose not to reopen the record to take evidence on that issue. Accordingly, another rate structure had to be implemented for those SSU facilities. Upon reviewing the evidence, we found that the modified stand-alone rate structure was

supported by the record in this docket. By Order No. PSC-95-1292-FOF-WS (and later affirmed in Order No. PSC-96-1046-FOF-WS), we required SSU to implement the modified stand-alone rate structure for all of the 127 facilities in Docket No. 920199-WS. Our decision on remand clearly includes the Spring Hill facility. (Emphasis supplied).

* * *

. . . SSU shall implement the modified stand-alone rate structure for the Spring Hill customers consistent with Orders Nos. PSC-95-1292-FOF-WS and PSC-96-1046-FOF-WS. (Emphasis supplied).

11. Any SSU excuse for not implementing the Commission-ordered modified stand-alone rates at Spring Hill evaporated when the First District Court of Appeal reversed the Refund Order and issued its Mandate in connection therewith. Nonetheless, SSU has, to date, continued to ignore this Commission's order to charge modified stand-alone rates and, in the process, has continued to unjustly enriched itself through the billing of illegal uniform rates. This Commission has an obligation to the SSU customers at Spring Hill to see that the modified stand-alone rates are implemented. Furthermore, the Commission has an additional interest in halting SSU's practice of "thumbing its corporate nose" at the Commission's attempts to see its orders implemented by this regulated utility. Accordingly, the Commission should immediately take all necessary steps to see that SSU implements modified stand-alone rates at its Spring Hill systems.

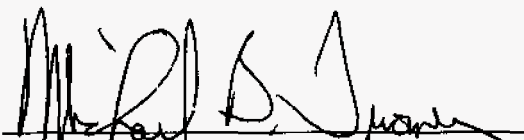
Motion To Impose Maximum Penalty

12. SSU has completely ignored this Commission's outstanding orders to reduce the rates it charges to its customers at Spring Hill to modified stand-alone levels so that it could continue to collect and keep the uniform rate subsidy overcharges. This Commission should not continue to tolerate this "rogue organization's" lack of respect for its orders. Accordingly, Senator Brown-Waite and Morty Miller move the Commission to impose the maximum fine

available against SSU for its failure to implement the Commission's orders requiring a lowering of rates at Spring Hill.

In view of the above, Senator Ginny Brown-Waite and Morty Miller respectfully request that the Florida Public Service Commission grant them status as parties to this docket; order Southern States Utilities, Inc. to make uniform rate overcharge refunds to them and the other SSU customers at Spring Hill for the entire period those rates have been in effect; and order the immediate implementation of the modified stand-alone rate structure at Spring Hill required by two earlier orders issued in this docket.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Michael B. Twomey", written over a horizontal line.

Michael B. Twomey
Attorney for Senator Ginny Brown-Waite
And Morty Miller

(850) 421-9530

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and accurate copy of the foregoing has been furnished by

U.S. Mail, postage prepaid, this 16th day of July, 1997 to the following persons:

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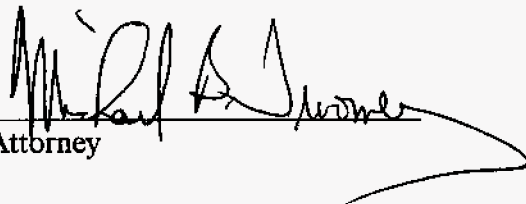
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