

ORIGINAL
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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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: August 5, 1997

PETITION OF SPRING HILL CIVIC ASSOCIATION, INC.,
SUGARMILL MANOR, INC., CYPRESS VILLAGE PROPERTY OWNERS
ASSOCIATION, INC., HARBOUR WOODS CIVIC ASSOCIATION, INC.,
HIDDEN HILLS COUNTRY CLUB HOMEOWNERS ASSOCIATION, INC.,
AMELIA ISLAND COMMUNITY ASSOCIATION, RESIDENT CONDOMINIUM,
RESIDENCE PROPERTY OWNERS ASSOCIATION, AMELIA SURF AND RACQUET
PROPERTY OWNERS ASSOCIATION AND SANDPIPER ASSOCIATION
TO INTERVENE AND MOTION TO COMPEL REFUNDS

The Spring Hill Civic Association, Inc., Sugarmill Manor, Inc., Cypress Village Property
Owners Association, Inc., Harbour Woods Civic Association, Inc., Hidden Hills Country Club
Homeowners Association, Inc., Amelia Island Community Association, Resident Condominium,
Residence Property Owners Association, Amelia Surf and Racquet Property Owners Association,
and Sandpiper Association (the "Intervenors"), by and through their undersigned attorneys,

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CTR _____
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OPE _____
RCH _____
SEC _____
WAS _____
OTH _____

rsuant 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 make refunds to its customers at all applicable systems for the
difference between the "uniform rates" previously approved by the Commission, but reversed by

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the First District Court of Appeal, and the modified stand-alone rates subsequently ordered by the Commission. In support of the petition and motions, the Intervenors state:

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 Intervenors and other SSU customers similarly situated were forced to pay subsidies now estimated to exceed \$10 million. After the Commission approved interim rates in Docket No. 950495-WS, the subsidies based solely on uniform rates ceased for all Intervenors, except for those at Spring Hill who continued to pay uniform rates and the subsidies inherent therein until June, 1997. Consequently, the residents of Spring Hill have paid additional subsidies now calculated to range from \$1.8 to \$2.5 million over and above the overcharges incurred prior to the approval of interim rates in Docket No. 950495-WS.

Shortly after the entry of the March 22, 1993 rate order in this docket, the Spring Hill Civic Association, Inc., among others, sought intervention in the case arguing that it and its members 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 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 the 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. SSU continued charging the illegal uniform rates at Spring Hill until June, 1997, when it unilaterally imposed new rates. Subsequent agreement with Hernando County has apparently resolved the legitimacy of prospective rates, but specifically preserved the issue of any refunds for resolution at this Commission.

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 names and addresses of the petitioners are:

✓ The Spring Hill Civic Association, Inc.,
c/o Morty Miller
1117 Lodge Circle
Spring Hill, Florida 34606

✓ Sugarmill Manor, Inc.
c/o Frank Bartley
8985 South Suncoast Blvd.
Homosassa, Florida 34446

✓ Cypress Village Property Owners Association, Inc.
c/o Harry C. Jones
108 Cypress Boulevard West
Homosassa, Florida 34446 ✓

✓ Harbour Woods Civic Association, Inc.
c/o Bill Ramp
11414 Woodsong Loop, South
Jacksonville, Florida 32225 ✓

✓ Hidden Hills Country Club Homeowners Association, Inc.
c/o Rich Hatfield, Esquire
12909 Jupiter Hills Circle North
Jacksonville, Florida 32225 ✓

✓ Amelia Island Community Association, Resident Condominium, Residence
Property Owners Association, Amelia Surf and Racquet Property Owners
Association, and Sandpiper Association ✓
c/o Arthur I. Jacobs, Esquire
Post Office Box 1110
Fernandina Beach, Florida 32035-1110 ✓

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

and

Arthur I. Jacobs
Post Office Box 1110
Fernandina Beach, Florida 32035-1110
(904) 261-3693

2. All the Intervenor organization and/or their members are customers of SSU and are entitled to refunds because they were charged uniform rates that were in excess of the level of subsequent "legal" approved by this Commission.

3. Members of the Spring Hill Civic Association, Inc. were SSU customers and paid the uniform rates approved by this Commission and are entitled to a refund of the difference between the modified stand-alone rates now ordered for Spring Hill and the uniform rates they were forced to pay along with appropriate interest. They have 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. The substantial interests of the customers at Spring Hill is unique in that they were forced to continue paying uniform rates and the subsidies inherent therein long after the other customers of SSU ceased paying uniform rates by the Commission's approval of interim rates in Docket No. 950495-WS.

4. All other Intervenors are entitled to refunds and interest for the difference between the excessive and unlawful uniform rates they were forced to pay and the interim rates approved by the Commission in Docket No. 950495-WS.

5. 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.”

6. It should be clear that the Intervenors have substantial interests 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, the Intervenors 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 Intervenors must be given a “point of entry” from which they can protect their substantial interests. The Commission should grant their petition to intervene.

Motion To Compel Refunds Through Customer Surcharges

7. 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.

8. 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. The Intervenors 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.

9. 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

10. 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. As stated previously, this interest is a substantial interest that is unique to the SSU customers served at the Spring Hill systems.

In view of the above, the Intervenors 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 with appropriate interest.

Respectfully submitted,

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

Michael B. Twomey

Attorney for Spring Hill Civic Association,
Inc., Sugarmill Manor, Inc., Cypress Village
Property Owners Association, Inc., Harbour
Woods Civic Association, Inc., and Hidden
Hills Country Club Homeowners
Association, Inc.,
(850) 421-9530

And

Arthur I. Jacobs
Attorney for Amelia Island Community
Association, Resident Condominium,
Residence Property Owners Association,
Amelia Surf and Racquet Property Owners
Association, and Sandpiper Association
Post Office Box 1110
Fernandina Beach, Florida 32035-1110
(904) 261-3693

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 5th day of August, 1997 to the following persons:

Brian Armstrong, Esquire
General Counsel
Southern States Utilities, Inc.
1000 Color Place
Apopka, Florida 32703

Vicki Kaufman, Esquire
McWhirter Law Firm
117 S. Gadsden Street
Tallahassee, Florida 32301

Kenneth A. Hoffman, Esquire
Rutledge, Ecenia, Underwood,
Purnell & Hoffman, P.A.
Post Office Box 551
Tallahassee, Florida 32302

Arthur I. Jacobs, Esquire
Post Office Box 1110
Fernandina Beach, Florida 32305-1110

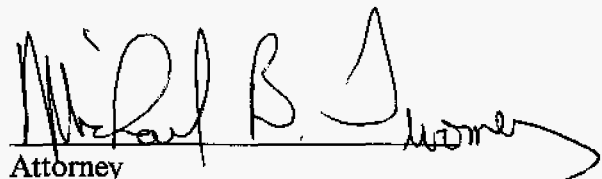
Lila A. Jaber, Esquire
Division of Legal Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0862

Darol H. N. Carr, Esquire
Farr, Farr, Emerich, Sifrit,
Hackett & Carr, P.A.
Post Office Drawer 2159
Port Charlotte, Florida 33949

Harold McLean, Esquire
Associate Public Counsel
Office of the Public Counsel
c/o The Florida Legislature
111 West Madison Street, Suite 812
Tallahassee, Florida 32399-1400

Larry M. Haag, Esquire
County Attorney Citrus County
107 North Park Avenue, Suite 8
Inverness, Florida 34450

Christiana T. Moore, Esquire
Associate General Counsel
Florida Public Service Commission
101 East Gaines Street
Tallahassee, Florida 32399-0850


Attorney