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 ORDER NO. PSC-97-1033-PCO-WS ISSUED: August 27, 1997

The following Commissioners participated in the disposition of this matter:

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

ORDER GRANTING INTERVENTION, REQUIRING UTILITY TO PROVIDE REFUND/SURCHARGE INFORMATION, AND ALLOWING PARTIES TO FILE BRIEFS

BY THE COMMISSION:

Background

On May 11, 1992, Florida Water Services Corporation, formerly known as Southern States Utilities, Inc. (FWSC, SSU, or utility), filed an application to increase the rates and charges for 127 of its water and wastewater service areas regulated by this Commission. By Order No. PSC-93-0423-FOF-WS, issued March 22, 1993, we approved an increase in the utility's final rates and charges, basing the rates on a uniform rate structure. On September 15, 1993, Commission staff approved the revised tariff sheets and the utility proceeded to implement the final rates.

Notices of appeal of Order No. PSC-93-0423-FOF-WS were filed with the First District Court of Appeal by Citrus County, Cypress and Oak Villages Association (COVA), now known as Sugarmill Woods Civic Association (Sugarmill Woods), and the Office of Public Counsel (OPC). On October 19, 1993, the utility filed a Motion to Vacate Automatic Stay, which the Commission granted by Order No. PSC-93-1788-FOF-WS, issued December 14, 1993.

On April 6, 1995, Order No. PSC-93-0423-FOF-WS was reversed in part and affirmed in part by the First District Court of Appeal. Citrus County v. Southern States Utils., Inc., 656 So. 2d 1307 (Fla. 1st DCA 1995). On October 19, 1995, Order No. PSC-95-1292-FOF-WS was issued, Order Complying with Mandate, Requiring Refund, and Disposing of Joint Petition (decision on remand). By that Order, FWSC was ordered to implement a modified stand-alone rate structure, develop rates based on a water benchmark of $52.00 and a wastewater benchmark of $65.00, and to refund accordingly. On November 3, 1995, FWSC filed a Motion for Reconsideration of Order No. PSC-95-1292-FOF-WS. At the February 20, 1996, Agenda Conference, we voted, inter alia, to deny FWSC's motion for reconsideration.

On February 29, 1996, subsequent to our vote on the utility's motion for reconsideration but prior to the issuance of the order memorializing the vote, the Supreme Court of Florida issued its opinion in GTE Florida, Inc. v. Clark, 668 So. 2d 971 (Fla. 1996). By Order No. PSC-96-0406-FOF-WS, issued March 21, 1996, after finding that the GTE decision may have an impact on the decision in this case, we voted to reconsider on our own motion, the entire decision on remand.

By Order No. PSC-96-1046-FOF-WS, issued August 14, 1996, we affirmed our earlier determination that FWSC was required to implement the modified stand-alone rate structure and make refunds to customers. However, we found that FWSC could not impose a surcharge to those customers who paid less under the uniform rate structure. The utility was ordered to make refunds to its customers for the period between the implementation of final rates in September 1993, and the date that interim rates were placed into effect in Docket No. 950495-WS. The refunds were to be made within 90 days of the issuance of the order.

On September 3, 1996, FWSC notified us that it had appealed Order No. PSC-96-1046-FOF-WS to the First District Court of Appeal. On that same date, FWSC filed a Motion for Stay of Order No. PSC-96-1046-FOF-WS. By Order No. PSC-96-1311-FOF-WS, issued October 28, 1996, we granted FWSC's motion for stay. FWSC implemented the modified stand-alone rate structure for the facilities that were included in the recent rate case, Docket No. 950495-WS, during interim. However, the Spring Hill facilities were not included in Docket No. 950495-WS and the rate structure for those facilities was not changed at that time. On November 12, 1996, OPC filed a Motion for Reconsideration and Clarification or, in the Alternative, Motion to Modify Stay, wherein OPC essentially requested that the utility be ordered to implement modified stand-alone rates for the Spring Hill customers. On November 18, 1996, FWSC timely filed its response to OPC's motion.

We heard oral argument on OPC's motion and FWSC's response during the January 21, 1997 Agenda Conference. By Order No. PSC-97-0175-FOF-WS, issued February 14, 1997, OPC's motion for reconsideration and clarification was denied, but we granted OPC's alternative motion to modify the stay. Order No. PSC-96-1046-FOF-WS was modified to reflect that only FWSC's refund obligation was stayed pending appeal, and that FWSC was required to implement the modified stand-alone rate structure for FWSC's Spring Hill facility in Hernando County, consistent with prior Commission Orders Nos. PSC-95-1292-FOF-WS and PSC-96-1046-FOF-WS.

On February 28, 1997, FWSC filed a Motion For Reconsideration of Order No. PSC-97-0175-FOF-WS and Motion For Stay of Order No. PSC-97-0175-FOF-WS Pending Disposition of Motion for Reconsideration, which we denied by Order No. PSC-97-0552-FOF-WS, issued May 14, 1997. On June 17, 1997, the First District Court of Appeal issued its opinion in Southern States Utils., Inc. v. Florida Public Service Comm'n, reversing our order implementing the remand of the Citrus County decision.

On July 16, 1997, Senator Ginny Browne-Waite and Mr. Morty Miller filed a Petition to Intervene and Motion to Compel Rate Reductions and Rate Refunds and for Maximum Penalty. This Order addresses portions of the Court's reversal of our order and the petitions to intervene.

Intervention by the City of Keystone Heights, Marion Oaks Civic Association, and Burnt Store Marina

By Order No. PSC-96-1046-FOF-WS, we denied intervention to the City of Keystone Heights, the Marion Oaks Civic Association, and the Burnt Store Marina as untimely. In denying the petitions to intervene, we relied on Rule 25-22.039, Florida Administrative Code, which states that petitions to intervene must be filed five days prior to hearing.

In the Southern States decision, the Court stated that:

> the PSC erred in denying these petitions 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.

Accordingly, the Court has directed us to reconsider our decision denying intervention by these groups (the City of Keystone Heights, the Marion Oaks Civic Association, and the Burnt Store Marina) and to consider any petitions for intervention filed by other such groups subject to a potential surcharge in this case. Southern States Utils., Inc., 22 Fla. L. Weekly at D1493.

Therefore, pursuant to Southern States Utils., Inc., 22 Fla. L. Weekly D1492, D1493 (Fla. 1st DCA 1997), intervention shall be granted to the City of Keystone Heights, Marion Oaks Civic Association, and the Burnt Store Marina. All parties shall furnish copies of future pleadings and other documents that are hereafter filed in this proceeding to Joe McGlothlin, Esquire, 117 South Gadsden Street, Tallahassee, Florida 32301, for the City of Keystone Heights and the Marion Oaks Civic Association; and to Darol Carr, Esquire, Post Office Box 2159, Port Charlotte, Florida 33949, for the Burnt Store Marina.

Intervention by Senator Browne-Waite and Mr. Morty Miller

In the petition to intervene, Senator Browne-Waite asserts that she was a customer of FWSC at her former residence in Spring Hill until October 1994, that she paid the uniform rates, and that she is entitled to a refund of the difference between the modified stand-alone rates and the uniform rates. Mr. Miller asserts that he is the former president of the Spring Hill Civic Association, resides in Spring Hill, and has continuously been a customer of FWSC since the uniform rates were first approved in March 1993.

Both Senator Browne-Waite and Mr. Miller state that they sought intervention shortly after the entry of the March 22, 1993 rate order and their petitions were denied as untimely by Order No. PSC-93-1598-FOF-WS, issued November 2, 1993. As further support for the petition to intervene, the petitioners assert that the Court has stated that we erred in denying the petitions to intervene as untimely because the issue of a potential surcharge and the applicability of GTE did not arise until the remand proceeding.

On July 28, 1997, the City of Keystone Heights, Marion Oaks Civic Association, and FWSC timely filed responses to the petition to intervene and motion to compel rate reductions. As indicated later, we have not entertained the remainder of the motion regarding rate reductions or penalties. Therefore, the responses to that portion of the motion are not discussed herein. The City of Keystone Heights and Marion Oaks take no position on the intervention petition. In its response, FWSC states that the Court directed the Commission to reconsider intervention by potential surcharge payers. It is the utility's position that the Court has not authorized the Commission to entertain requests for intervention by customers whose interests are already represented.

We find that we must read the Southern States decision broadly to ensure the participation of all substantially affected persons in this proceeding. We have identified below possible options in resolving this case on remand. Some of the options we will consider may not have been foreseen and therefore could not have been considered by any group. In this regard, this proceeding is unique. With regard to Senator Browne-Waite and Mr. Miller, we believe that, as potential refund customers, they have an interest in how the Commission ultimately decides to allocate any refund and/or surcharge. In our broad reading of the Court's opinion, we believe a concern regarding the limitation of participation has been identified. In an effort to allow input from all substantially affected persons, the petition to intervene filed by Senator Browne-Waite, in her individual capacity, and Mr. Miller is granted. All parties shall furnish copies of future pleadings and other documents that are hereafter filed in this proceeding to Michael Twomey, Esquire, Route 28, Box 1264, Tallahassee, Florida 32310. We will not consider the motion to compel rate reductions, refunds, and penalties at this time. This portion of the motion may be addressed after the parties have filed briefs as required below.

Utility Information on Impact of Refund/Surcharge

As set forth below, we have identified possible options in resolving this case on remand. We have not made any findings in this regard. In their July 28, 1997 response to the petition to intervene filed by Senator Browne-Waite and Mr. Miller, the City of Keystone Heights and Marion Oaks Civic Association suggested that we also analyze information concerning the number of customers who would be affected by a surcharge and the amount of money they would be required to pay collectively and on an individual basis to fund any refund to other customers. We agree that this information will be helpful to us in completing our analysis on the final resolution of this matter. We agree that this information should be gathered before the time period for filing briefs expires. This information is readily available to the utility. Therefore, FWSC shall provide an exact calculation by service area of the potential refund and surcharge with and without interest as of June 30, 1997. This information shall be provided to our Staff and the parties by August 29, 1997.

Request for Briefs

By Order No. PSC-96-1046-FOF-WS, we required the utility to make refunds to those customers who paid more under the uniform rate structure than under the modified stand-alone rate structure approved on remand. We did not allow the utility to collect a surcharge for undercollections. In that Order, we found that certain factual differences between the two cases made the GTE decision inapplicable to the instant case. In its opinion, the Court found that we erred in relying on those factual differences for finding GTE inapplicable. Accordingly, the Court has reversed and remanded for reconsideration.

In reading the opinion, it is clear that the Court believes that the GTE decision is applicable. GTE states that "equity requires that both ratepayers and utilities be treated in a similar manner." GTE Florida, Inc., 668 So. 2d at 972. In that regard, it is clear that requiring the utility to make a refund of overcharges and allowing it to collect surcharges for undercollections would meet the "fairness and equity" standard set forth in GTE. It is not clear to us, however, if this is the only solution to our final resolution of this matter. Therefore, we have preliminarily identified some options we may pursue in light of the Southern States decision. The possible options are to:

1. require refunds with interest/allow surcharges with interest;
2. do not require refunds/do not allow surcharges because the rates have been changed prospectively;
3. order refunds without interest/allow surcharges without interest;
4. allow the utility to make refunds and collect surcharges over an extended period of time to mitigate financial impacts; and
5. allow the utility to make refunds and collect surcharges over different periods of time.

As stated earlier, we do not believe we have all of the information or input from the parties necessary to help us make a decision at this time. Accordingly, we request that parties file briefs, by September 30, 1997, to address the appropriate action to be taken in light of the decision in Southern States Utils., Inc. v. Florida Public Service Comm'n. In addition to responding to this overall question, we ask that the parties respond specifically to the possible options identified above. Parties are encouraged to further brief other possible options, if any, for final resolution of this matter.

Spring Hill Facilities

As mentioned earlier, FWSC implemented the modified stand-alone rate structure for all of its facilities included in Docket No. 950495-WS during interim. Therefore, the period of time for determining any refund or surcharge amount for those facilities ends with the implementation of the interim rates. However, the Spring Hill facilities were not included in Docket No. 950495-WS and the Spring Hill rates were not changed at that time. We ordered FWSC to implement modified stand-alone rates at its Spring Hill facility. As point of information, we received a copy of a settlement agreement between Hernando County and the utility wherein they have agreed on a prospective rate change which became effective June 14, 1997.

As a result of these circumstances, the period of time for a refund due to the rate structure change is longer for the Spring Hill facilities than for the others. Spring Hill will be part of any decision that is ultimately made regarding refunds and surcharges up to the time modified stand-alone rates were implemented for all other FWSC facilities. However, we recognize that there is also a separate issue of the appropriate refund for this facility for the period of time since modified stand-alone rates were implemented for the other facilities. We will address the Spring Hill situation after the parties have filed briefs.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the City of Keystone Heights, the Marion Oaks Civic Association, and the Burnt Store Marina are granted intervention. It is further

ORDERED that the petition to intervene filed by Senator Ginny Browne-Waite and Mr. Morty Miller is granted. It is further

ORDERED that all parties shall furnish copies of future pleadings and other documents hereafter filed to Joe McGlothlin, Esquire, McWhirter, Reeves, McGlothlin, Davidson, Rief & Bakas, P.A., 117 Gadsden Street, Tallahassee, Florida 32301, Darol Carr, Esquire, Farr, Farr, Emerich, Sifrit, Hackett & Carr, P.A., Post Office Box 2159, Port Charlotte, Florida 33949 and Michael Twomey, Esquire, Route 28, Box 1264, Tallahassee, Florida 32310. It is further

ORDERED that Florida Water Services Corporation shall provide to Commission Staff and all parties information regarding the impact of any potential refund and/or surcharge as set forth in this order by August 29, 1997. It is further

ORDERED that all parties may file briefs as set forth in the body of this order, by September 30, 1997, to address the appropriate action the Commission should take in light of the decision in Southern State Utils., Inc. v. Florida Public Service Commission.

By ORDER of the Florida Public Service Commission, this 27th day of August, 1997.

BLANCA S. BAYÓ, Director
Division of Records and Reporting

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code, if issued by a Prehearing Officer; (2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or (3) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of

Records and Reporting, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.