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November 5, 1997

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

Re: Docket No. 920199-WS

Dear Ms. Bayo:

Enclosed for filing in the above-referenced docket are the original and 15 copies of the Citizens' Brief. A diskette in WordPerfect 6.1 is also submitted.

Please indicate the time and date of receipt on the enclosed duplicate of this letter and return it to our office.

Sincerely,

Charles J. Beck  
Deputy Public Counsel

ACK   
AFA   
APP   
CAF   
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1 CJB:bsr

5 Enclosures

WTS  
OTH

RECEIVED & FILED  
FPSC-BUREAU OF RECORDS

DOCUMENT NUMBER-DATE

11371 NOV-5 004690

FPSC-RECORDS/REPORTING

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: November 5, 1997

CITIZENS' BRIEF

The Citizens of Florida ("Citizens"), by and through Jack Shreve, Public Counsel, file this brief in response to PSC order no. PSC-97-1033-PCO-WS issued August 27, 1997. The Citizens' brief is strictly limited to the issue of whether Florida Water Services, Inc. ("Florida Water") should be responsible for a refund to Spring Hill customers for the period January, 1996, through June, 1997.

By order no. PSC-93-0423-FOF-WS issued March 22, 1993, the Commission implemented "uniform rates" in this case. *Citrus County vs. Southern States Utilities*, 656 So.2d 1307 (Fla. 1st DCA 1995) reversed the Commission's uniform rate decision, however, and remanded the case to the Commission.

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11371 NOV-5 7169  
FPSC-RECORDS/REPORTING

On remand, Commission order no. PSC-95-1292-FOF-WS issued October 19, 1995, required Florida Water to implement final rates based on a modified individual system basis. SSU subsequently moved for reconsideration of that order, and then the Commission itself further reconsidered the order on its own motion. Ultimately, the Commission issued order no. PSC-96-1046-FOF-WS in docket 920199-WS entitled "Final Order on Remand and Requiring Refund." This order reaffirmed the portions of order no. PSC-95-1292-FOF-WS which addressed the implementation of the modified stand alone rate structure and required Florida Water to refund the difference between uniform rates and modified stand-alone rates in those instances where uniform rates were greater than modified stand-alone rates. This order was appealed and the Commission was again reversed, but not on the issue of modified stand-alone rates. *Southern States Utilities, Inc., v. Florida Public Service Commission*, Florida First District Court of Appeal, opinion filed June 17, 1997. Quoting *GTE Florida Inc. v. Clark*, 668 So.2d 971 (Fla. 1996), the court found that equity applies to both utilities and ratepayers when an erroneous rate order is entered and found that it would clearly be inequitable for either utilities or ratepayers to benefit, thereby receiving a windfall, from an erroneous PSC order. The court further found that the PSC violated this directive by ordering SSU to provide refunds to customers who overpaid under the erroneous uniform rates without allowing SSU to surcharge customers who underpaid under those rates.

Except for the Spring Hill system, the "overpayments" and "underpayments" described by the court ended in January, 1996, when the Commission ordered SSU to

implement modified stand alone rates, increased by an interim revenue amount, in SSU's more recent rate case, docket 950495-WS. Order no PSC-96-0125-FOF-WS, docket 950495-WS, issued January 25, 1996. The Spring Hill system, however, was not affected by the interim rate increase because the Commission had decided that systems located in Hernando, Hillsborough, and Polk county would not be subject to a rate increase in docket 950495-WS. Order no. PSC-95-1385-FOF-WS, docket 950495-WS, issued November 7, 1995.

SSU implemented the interim rate increase in docket 950495-WS in January, 1996, based on modified stand-alone rates. Rates in Spring Hill remained at uniform rate levels because Spring Hill was not included in docket 950495-WS. Nevertheless, the Commission had ordered implementation of modified stand-alone rates in Spring Hill *before* allowing the interim increase in docket 950495-WS. Order no. PSC-95-1292-FOF-WS issued October 19, 1995. This order never became final because of motions for reconsideration, a reconsideration by the Commission on its own, and an appeal. The Commission intended to require implementation of the modified stand-alone rates for *all* of the systems included in docket 920199-WS. See order no. PSC-97-0175-FOF-WS issued February 14, 1997.

Once SSU implemented the interim rate increase in docket 950495-WS based on modified stand alone rates, there was no longer any reason for Spring Hill to continue paying uniform rates. The interim rates provided the full revenue requirement for the

systems in docket 950495-WS without requiring a subsidy from the Spring Hill system. When all other systems *except* Spring Hill went to a modified stand-alone rate structure in January, 1996, it was Florida Water – not any customer group -- that received a windfall equal to the difference between uniform rates and modified stand-alone rates.

By attempting to keep the windfall generated by charging uniform rates in Spring Hill after all other systems had gone to modified stand-alone rates, Florida Water asks this Commission to abandon the principles set forth in the *GTE* case. *GTE* emphasizes the point that equity applies to both utilities and ratepayers when an erroneous rate order is entered. The Court in *Southern States Utilities* further explained that it would clearly be inequitable for either utilities or ratepayers to benefit, thereby receiving a windfall, from an erroneous PSC order. Florida Water's attempt to keep the higher uniform rate levels in Spring Hill since January, 1996, after the Commission had already ordered Spring Hill to pay substantially lower modified stand-alone rates, is directly contrary to these principles.

Even worse, if the Commission were to adopt Florida Water's position, the consequence would be requiring customers from systems already paying modified stand-alone rates pay an additional surcharge to refund Spring Hill's overpayments to Florida Water. There is no logic in requiring these customers to pay a surcharge for periods when they were no longer paying uniform rates themselves.

Florida Water may also argue that they should be able to keep this windfall because of an automatic stay of the Commission order directing Spring Hill customers to pay modified stand-alone rates. A stay does not affect the substantive rights of a party. In *City of Plant City v. Mann*, 400 So.2d 952 (Fla. 1981), the Florida Supreme Court stated:

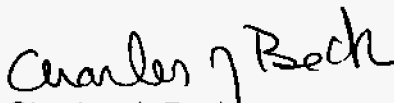
"A supersedeas on appeal from a final judgment stays the execution but does not undo the performance of the judgment. *Crichlow v. Maryland Casualty Company*, 116 Fla. 226, 156 So. 440 (1934). Being preventive in its effect the stay does not undo or set aside what the trial court had adjudicated, *Henry v. Whitehurst*, 66 Fla. 567, 64 So. 233 (1914), it merely suspends the order. *El Prado Restaurant, Inc. v. Weaver*, 259 So.2d 524 [1972 Fla. 3DCA 948] (Fla. 3d DCA 1972)."

The *GTE* case also dealt with the effect of stays. The Commission had initially ruled that GTE's failure to request a stay during the pendency of the appellate and remand processes precluded it from recovering expenses incurred during that time period. The Florida Supreme Court reversed, finding that the failure to request a stay under these circumstances was not dispositive. An automatic stay of the Commission's order in this case simply has no relevance to the ultimate substantive rights between the parties.

For these reasons, the Commission should reject any attempt by Florida Water to keep the windfall it received by charging higher uniform rates to customers in Spring Hill after all others systems changed to modified stand-alone rates. The refund to Spring Hill customers for the difference between uniform rates and modified stand-alone rates during this time period should be paid by Florida Water.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

Docket No. 920199-WS

I HEREBY CERTIFY that a correct copy of the foregoing has been furnished by U.S. Mail or hand-delivery\* to the following party representatives on this 5th day of November, 1997.

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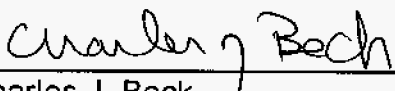
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