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November 25, 1997

Ms. Blanca S. Bayo, Director
Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Betty Easley Conference Center
Room 110
Tallahassee, Florida 32399-0850

HAND DELIVERY

Re: Docket No. 950495-WS

Dear Ms. Bayo:

Enclosed herewith for filing in the above-referenced docket on behalf of Florida Water Services, Inc. ("Florida Water") are the following documents:

1. Original and fifteen copies of Florida Water's Motion to Establish Mechanism to Hold Florida Water Harmless Should the Commission Approved Rate Structure Be Reversed; and

2. A disk in Word Perfect 6.0 containing a copy of the Motion.

Please acknowledge receipt of these documents by stamping the extra copy of this letter "filed" and returning the same to me.

Thank you for your assistance with this filing.

Sincerely,

Kenneth A. Hoffman
Kenneth A. Hoffman

RECEIVED & FILED
EPSC-BUREAU OF RECORDS

KAH/rl
Enclosures

cc: All Parties of Record

DOCUMENT NUMBER-DATE

12129 NOV 25 97

FPSC-RECORDS/REPORTING

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application by Southern States Utilities, Inc. for rate increase and increase in service availability charges for Orange-Osceola Utilities, Inc. in Osceola County, and in Bradford, Brevard, Charlotte, Citrus, Clay, Collier, Duval, Highlands, Lake, Lee, Marion, Martin, Nassau, Orange, Osceola, Pasco, Polk, Putnam, Seminole, St. Johns, St. Lucie, Volusia and Washington Counties.

Docket No. 950495-WS

Filed: November 25, 1997

FLORIDA WATER'S MOTION TO ESTABLISH MECHANISM TO HOLD FLORIDA WATER HARMLESS SHOULD THE COMMISSION APPROVED RATE STRUCTURE BE REVERSED

Florida Water Services Corporation ("Florida Water"), formerly Southern States Utilities, Inc., by and through its undersigned counsel, hereby requests the Commission to enter an order establishing an appropriate mechanism which will hold Florida Water harmless in the event the Commission-approved modified stand-alone capband rate structure is appealed and reversed by an appellate court. In support of these Motions, Florida Water states as follows:

1. Florida Water files these Motions in an effort to avoid a repeat of the controversy and myriad of issues concerning potential refunds and surcharges which have arisen in Docket No. 920199-WS.

2. On October 30, 1996, the Commission entered Order No. PSC-96-1320-FOF-WS ("Final Order") in this proceeding.¹ The Final

¹96 F.P.S.C. 10:386 (1996).

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Order was modified, in part, on reconsideration. See Order No. PSC-97-0613-FOF-WS issued May 29, 1997.²

3. The Commission determined that the appropriate annual revenue requirements are \$33,389,617 for Florida Water's water facilities and \$24,701,470 for Florida Water's wastewater facilities. The Commission also concluded that the final revenue requirements should be recovered from ratepayers under a so-called modified stand-alone "capband" rate structure. See Final Order, at 225-227.³ Florida Water filed proposed final rate tariffs implementing its final revenue requirement under the Commission approved modified stand-alone capband rate structure which were approved effective for service rendered on or after September 20, 1996.

4. On November 1, 1996, Florida Water filed a Notice of Appeal of the Final Order with the First District Court of Appeal. Subsequently, on November 27, Citrus County and other intervenors filed a Notice of Cross-Appeal with the First DCA.⁴ The appeals are lodged in First DCA Case No. 96-04227.

5. Citrus County has challenged the Commission's approval of the capband rate structure in the appeal currently pending before the First DCA. All briefs have been filed in that appeal.

²97 F.P.S.C. 5:609 (1997).

³96 F.P.S.C. 10:386, 562-564 (1996).

⁴On November 26, 1996, a Notice of Cross-Appeal also was filed by the Office of Public Counsel.

6. Florida Water is concerned by the apparent lack of competent substantial evidence which would support the capband rate structure on appeal. Florida Water is aware of no testimony in the record which specifically addresses and/or supports the capband rate structure approved by the Commission.

7. In Docket No. 920199-WS, as here, Citrus County appealed the Commission's final order after Florida Water had filed and received approval of the tariffs reflecting its Commission approved final revenue requirement. The appeal of Citrus County ostensibly triggered an automatic stay. See Fla.Admin.Code R. 25-22.061(3)(a); Fla.R.App.P. 9.310(b)(2). Florida Water moved to vacate the automatic stay and that request was granted.⁵ Citrus County's appeal resulted in the reversal of the Commission-imposed uniform rate structure. Citrus County v. Southern States Utilities, 656 So.2d 1307 (Fla. 1st DCA 1995). The Commission unlawfully attempted to hold Florida Water accountable for moving to vacate the automatic stay by attempting to require Florida Water to make refunds to customers whose rates were higher under the uniform rate structure without also authorizing Florida Water to collect commensurate surcharges from customers who enjoyed lower rates under the uniform rate structure.⁶ The Commission's Final Refund Order was reversed by the First District Court of Appeal in Southern States Utilities, Inc. v. Florida Public Service

⁵In Re: Application for Rate Increase by SOUTHERN STATES UTILITIES, INC., 93 F.P.S.C. 12:280 (1993).

⁶In Re: Application for Rate Increase by SOUTHERN STATES UTILITIES, INC., 96 F.P.S.C. 8:198 (1996) ("Final Refund Order").

Commission, 22 Fla.L.Weekly D1492, Florida First DCA, June 17, 1997 ("Southern States").

8. Application of the Southern States decision in this case would require the Commission to authorize the collection of commensurate surcharges if: (a) the capband rate structure is reversed on appeal; and (b) the Commission orders refunds for some of Florida Water's customers on remand of such a reversal.

9. The Commission is currently faced with the fundamental issue of whether it should order refunds and surcharges or no refunds and surcharges on remand from the Southern States decision in Docket No. 920199-WS. If the Commission determines that no refunds should be made and no surcharges collected on remand from the Southern States decision, the Commission will avoid the potential of protracted proceedings, controversy and issues in this proceeding which could arise if the capband rate structure is reversed. However, if the Commission continues its inclination to appease ratepayers who desire refunds at the expense of ratepayers who would have to pay surcharges, then a virtual repeat of the Docket No. 920199-WS refund/surcharge scenario could ensue in this proceeding.

10. Florida Water believes that an automatic stay may have been triggered by Citrus County's Notice of Cross-Appeal. However, as confirmed by the Southern States decision and the decision of the Florida Supreme Court in GTE Florida Inc. v. Clark, 668 So.2d 971 (Fla. 1996), the absence or presence of a stay cannot and does not impair the right of the utility to recover its Commission

approved final revenue requirement.

11. If the Commission determines that an automatic stay was triggered by Citrus County's Notice of Cross-Appeal, then it would appear appropriate for the Commission to confirm Florida Water's right to continue collecting final rates pursuant to the Final Order under the current approved and effective tariffs.

12. Florida Water requests that the Commission address the stay issue as it impacts rate structure and establish a mechanism, consistent with the Southern States decision, to hold Florida Water harmless and minimize adverse impacts on customers should the Commission approved modified stand-alone capband rate structure be reversed.

WHEREFORE, for these reasons, Florida Water requests the Commission to enter an Order:

A. Determining that Florida Water has lawfully implemented its final rates pursuant to the Final Order;

B. Establishing an appropriate mechanism to hold Florida Water harmless and decrease the magnitude of the refunds/surcharges which would be required in the event the Commission approved modified stand-alone capband rate structure is reversed on appeal and such a mechanism is implemented in Docket No. 920199-WS; for example, by authorizing Florida Water to collect rates from its customers to reflect the higher of each customer's rates under the modified stand-alone capband rate structure versus a stand-alone rate structure with the difference held subject to refund pending the disposition of the appeals of the Final Order; and

C. Granting Florida Water such further relief as deemed to be just, reasonable and proper.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was furnished by U. S. Mail to the following on this 25th day of November, 1997:

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