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RUTLEDGE, ECENIA, UNDERWOOD, PURNELL & HOFFMAN

PROFESSIONAL ASSOCIATION
ATTORNEYS AND COUNSELORS AT LAW

STEPHEN A. ECENIA
KENNETH A. HOFFMAN
THOMAS W. KONRAD
R. DAVID PRESCOTT
HAROLD F. X. PURNELL
GARY R. RUTLEDGE
R. MICHAEL UNDERWOOD
WILLIAM B. WILLINGHAM

POST OFFICE BOX 551, 32302-0551
215 SOUTH MONROE STREET, SUITE 420
TALLAHASSEE, FLORIDA 32301-1841

TELEPHONE (904) 681-6788
TELECOPIER (904) 681-6515

GOVERNMENTAL CONSULTANTS:
PATRICK R. MALOY
AMY J. YOUNG

May 16, 1996

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. 920199-WS

Dear Ms. Bayo:

Enclosed herewith for filing in the above-referenced docket on behalf of Southern States Utilities, Inc. ("SSU") are the following documents:

1. Original and fifteen copies of SSU's Response in Opposition to the City of Keystone Heights', Marion Oaks Homeowners Association's and Burnt Store Marina's Petition to Intervene and Request for Oral Argument; and

2. A disk in Word Perfect 6.0 containing a copy of the document entitled "Giga.515."

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

KAH/rl
cc: All Parties of Record

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application of Southern States Utilities, Inc. and Deltona Utilities, Inc. for Increased Water and and Wastewater Rates in Citrus, Nassau, Seminole, Osceola, Duval, Putnam, Charlotte, Lee, Lake, Orange, Marion, Volusia, Martin, Clay, Brevard, Highlands, Collier, Pasco, Hernando, and Washington Counties.	)	Docket No. 920199-WS Filed: May 16, 1996

SSU'S RESPONSE IN OPPOSITION TO THE CITY OF KEYSTONE HEIGHTS', MARION OAKS HOMEOWNERS ASSOCIATION'S AND BURNT STORE MARINA'S PETITION TO INTERVENE AND REQUEST FOR ORAL ARGUMENT

Southern States Utilities, Inc. ("SSU"), by and through its undersigned counsel, hereby files its Response in Opposition to the Petition to Intervene filed by the City of Keystone Heights ("Keystone"), Marion Oaks Homeowners Association ("Marion Oaks") and Burnt Store Marina ("Burnt Store"), hereinafter referred to collectively as "Petitioners." In support of its Response, SSU states as follows:

1. Rule 25-22.039, Florida Administrative Code, requires, inter alia, that a Petition for Leave to Intervene be filed at least five days before the final hearing. Here, there is no question that the Petition to Intervene filed by the Petitioners is untimely. This rate case proceeded to final hearing in November, 1992 with the Final Order issued in March, 1993.[1] Following the appeal of the Final Order and the decision of the First District

[1]Order No. PSC-93-0423-FOF-WS issued March 22, 1993.

Court of Appeal in Citrus County v. Southern States Utilities, 656 So.2d 1307 (Fla. 1st DCA 1995) ("Citrus County"), the case was remanded to the Commission "for disposition consistent" with the Citrus County decision. Id., 656 So.2d at 1311. The case is currently pending before the Commission on the issues of:

> whether reopening the record in Docket No. 920199-WS is appropriate, whether refunds are appropriate, and whether a surcharge as set forth in the GTE decision[2] is appropriate.

Order No. PSC-96-0406-FOF-WS issued March 21, 1996, at 3 ("Reconsideration Order").

2. Numerous parties have attempted to intervene following the final hearing in this proceeding. Dating back to April of 1993, petitions to intervene were filed by Sugarmill Manor, Inc., Spring Hill Civic Association, Inc., State Senator Ginny Brown-Waite and Cypress Village Property Owners Association. These petitions to intervene were filed in the April to June, 1993 time period and all sought intervention for the purpose of seeking reconsideration of the Commission's decision imposing a statewide uniform rate structure on SSU. All of the foregoing petitions to intervene were denied by Order No. PSC-93-1598-FOF-WS issued November 2, 1993.

3. More recently, following the remand of this proceeding from the First District Court of Appeal to the Commission, petitions for leave to intervene were filed by Putnam County and Keystone, customers of SSU whose rates are lower under the uniform

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[2]GTE Florida, Inc. v. Clark, 668 So.2d 971 (Fla. 1996).

rate structure when compared with a so-called stand-alone rate structure. Putnam County's Petition for Leave to Intervene was served on November 21, 1995. Keystone's Petition for Leave to Intervene was served on January 17, 1996. Both petitions for leave to intervene were denied in the Reconsideration Order issued March 21, 1996.

4. Now, Keystone seeks to intervene for a second time in this proceeding. Keystone is joined by Marion Oaks and Burnt Store. Like Putnam County, Keystone, Marion Oaks and Burnt Store are all SSU customers whose rates are lower under uniform rates when compared with so-called stand alone rates.

5. The Petitioners argue that they should be permitted to intervene because the Commission authorized intervention " based on an analogous situation"[3] in Docket No. 950495-WS. Petitioners' assertion is without merit. In Docket No. 950495-WS, the Office of Public Counsel ("OPC") filed a Motion for Appointment of Counsel. OPC's Motion requested the Commission to order SSU to pay the cost of legal services incurred for representation of customers who support uniform rates and representation of customers who oppose uniform rates with such costs recovered by SSU as prudently incurred rate case expense. The Commission denied OPC's Motion for Appointment of Counsel finding, inter alia, that the Commission lacked statutory authority to require SSU to incur this expense. See Order No. PSC-96-0301-FOF-WS issued February 27, 1996, at 4.

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[3]See Petitioners' Petition to Intervene, at paragraph 5.

5. The Petitioners were granted intervention in Docket No. 950495-WS, prior to the conclusion of the hearing, once OPC remedied the defect in its proposal by procuring funds out of its own budget to pay for counsel who would represent customers supporting uniform rates and counsel who would represent customers opposing uniform rates. Intervention was permitted for the limited purpose of supporting uniform rates and addressing service availability charge issues.

6. The Petitioners' Petition to Intervene in the instant docket presents a starkly contrasting situation. Here, the Petitioners arrive before the Commission some three and a half years after the final hearing announcing that they have secured counsel and would like to participate in the remaining stages of the proceeding. Their Petition to Intervene presents nothing more than another rate design related issue where customers have competing interests -- the same type of issue raised in the six previous post-hearing petitions to intervene denied by the Commission, including the Petition to Intervene served in January of 1996 by Keystone. The grounds purporting to support the Petition to Intervene also are factually and legally deficient.

a. First, the Petitioners' reliance on Sections 366.041, 366.06 and 366.07, Florida Statutes[4] as statutes entitling petitioners to relief are totally misplaced. There is nothing in Chapter 366, Florida Statutes, which supports intervention in this water and wastewater rate proceeding.

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[4] See Petition to Intervene, at paragraph 14.

b. Second, Petitioners allege that the refund issue in this docket presents a potential conflict for varying groups of customers which was not known until the entry of the GTE Florida decision and the Commission's Reconsideration Order.[5] The only potential conflict between customers arising from the refund issue stems from SSU's Motion for Reconsideration of Order No. PSC-95-1292-FOF-WS filed on **November 3, 1995** where SSU requested the Commission to either: (i) rescind the refund requirement; or (ii) adopt and approve a prospective surcharge mechanism which would allow SSU to recoup the amount of the refund if refunds were required. Thus, contrary to the allegations of the Petitioners, the potential conflict raised by the refund issue arose pursuant to SSU's Motion for Reconsideration filed on November 3, 1995 -- not on March 21, 1996 when the Reconsideration Order was issued.

7. As previously stated, SSU's Motion for Reconsideration presented two alternative proposals for relief. The initial remedy sought by SSU was that no refunds be granted. The impact of this remedy would be that the customers of SSU who paid higher rates under the so-called stand-alone rate structure during the pendency of the appeal would not be granted refunds. In addition, the customers who paid lower rates under the uniform rate structure during the pendency of the appeal would not be affected. The alternative remedy sought by SSU is the prospective surcharge mechanism if refunds are required. Under this alternative proposal, the customers who paid higher rates under the so-called

[5] See Petition to Intervene, at paragraph 7.

stand-alone rate structure would receive a refund. The customers who paid lower rates under the uniform rate structure during the pendency of the appeal would pay a prospective surcharge to pay for the amount of the refund. Clearly, the alternative remedies proposed by SSU in its Motion for Reconsideration have different impacts on the same customers depending on which remedy is granted. Nonetheless, on November 15, 1995, OPC filed a Response in Opposition to SSU's Motion for Reconsideration. SSU's two alternative proposals remain pending before the Commission. Simply put, to the extent the Petitioners seek to intervene to assert their opposition to SSU's proposed prospective surcharge mechanism, their interests have already been asserted and protected through OPC's Response in Opposition to SSU's Motion for Reconsideration.

WHEREFORE, for the foregoing reasons, SSU respectfully requests that the Petition to Intervene and Request for Oral Argument filed by the City of Keystone Heights, Marion Oaks Homeowners Association and Burnt Store Marina be denied.

Respectfully submitted,

KENNETH A. HOFFMAN, ESQ.
WILLIAM B. WILLINGHAM, ESQ.
Rutledge, Ecenia, Underwood,
Purnell & Hoffman, P.A.
P. O. Box 551
Tallahassee, FL 32302-0551
(904) 681-6788

and

BRIAN P. ARMSTRONG, ESQ.
Southern States Utilities, Inc.
1000 Color Place
Apopka, Florida 32703
(407) 880-0058

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished by U.S. Mail to the following on May 16, 1996:

John R. Howe, Esq.
Office of Public Counsel
111 West Madison Street
Room 812
Tallahassee, FL 32399-1400

Lila Jaber, Esq.
Division of Legal Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Room 370
Tallahassee, FL 32399-0850

Mr. Harry C. Jones, P.E.
President
Cypress and Oak Villages Association
91 Cypress Boulevard West
Homasassa, Florida 32646

Michael S. Mullin, Esq.
P. O. Box 1563
Fernandina Beach, Florida 32034

Larry M. Haag, Esq.
County Attorney
111 West Main Street #B
Inverness, Florida 34450-4852

Susan W. Fox, Esq.
MacFarlane, Ferguson
P. O. Box 1531
Tampa, Florida 33601

Michael B. Twomey, Esq.
Route 28, Box 1264
Tallahassee, Florida 31310

Joseph A. McGlothlin, Esq.
Vicki Gordon Kaufman, Esq.
117 S. Gadsden Street
Tallahassee, FL 32301

Darol H.N. Carr, Esq.
David Holmes, Esq.
P. O. Drawer 159
Port Charlotte, FL 33949

Michael A. Gross, Esq.
Assistant Attorney General
Department of Legal Affairs
Room PL-01, The Capitol
Tallahassee, FL 32399-1050

By: _____
KENNETH A. HOFFMAN, ESQ.

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