

10/20/95

ORIGINAL
FILE COPY

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

In re: Investigation Into the)
Appropriate Rate Structure for)
SOUTHERN STATES UTILITIES, INC.)
for all Regulated Systems in)
Bradford, Brevard, Citrus, Clay)
Collier, Duval, Hernando,)
Highlands, Lake, Lee/Charlotte,)
Marion, Martin, Nassau, Orange,)
Pasco, Putnam, Seminole, St.)
Johns, St. Lucie, Volusia, and)
Washington Counties.)

DOCKET NO. 930880-WS

Application for rate increase 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, Putnam,)
Seminole, St. Johns, St. Lucie, Volusia, and)
Washington Counties, by Southern States)
Utilities, Inc.)

DOCKET NO. 950495-WS
FILED: Sept. 12, 1995

- ACK
- AFA
- APP
- CAF
- CMU
- CTR
- EAG
- LEC
- LIT
- OPC
- ROH
- SEC
- WAS
- OTH

VERIFIED PETITION TO DISQUALIFY OR,
IN THE ALTERNATIVE, TO ABSTAIN

Citrus County, as a party to Docket No. 920199-WS, the Sugarmill Woods Civic

Association, Inc., as a party to Docket Nos. 920199-WS and 950495-WS, and the Spring Hill

RECEIVED & FILED
WAS
FLORENCE W. BROWN, CLERK

DOCUMENT NUMBER-DATE

08990 SEP 08 2597

FPSO-RECORDS/REPORTING

Civic Association, Inc., as a party to Docket Nos. 930880-WS and 950495-WS, by and through their undersigned counsel, move to disqualify Public Service Commissioner Diane K. Kiesling from proceeding further in the above-described matters, pursuant to Fla.R.Civ.P. 1.432, Section 38.10, Florida Statutes, and Rule 25-21.004, Florida Administrative Code, and as grounds, state:

1. The Sugarmill Woods Civic Association, Inc. and the Spring Hill Civic Association, Inc. (collectively referred to as "the Associations") fear that Commissioner Kiesling will not hear proceedings in the above-described dockets with an open mind. The Associations fear that Commissioner Kiesling is biased in favor of Southern States Utilities, Inc. ("SSU") in all three dockets ("SSU") and that she is biased in favor of the uniform rate structure SSU is seeking to have sustained in Docket No. 920199-WS and imposed in Docket No. 950495-WS. The Associations fear that Commissioner Kiesling has demonstrated her bias publicly by engaging in inappropriate political activity promoting the uniform rate structure to SSU's advantage and the Associations' disadvantage, while two of the above-styled dockets were either still pending at the Public Service Commission ("PSC") or on judicial review. Lastly, the Associations fear that Commissioner Kiesling cannot participate in any of the above-styled dockets with an open mind and in a fair and impartial manner because she has publicly reproached and berated the Associations' counsel, Michael B. Twomey, in a manner clearly evidencing contempt, disdain, impatience and a lack of courtesy to said counsel and in a manner demonstrating an unprofessional and total lack of judicial temperament on the part of the commissioner.

JUDICIAL STANDARDS

2. In establishing a Code of Ethics for Public Officers and Employees, the Florida Legislature has stated that it "is essential to the proper conduct and operation of government that

public officials be independent and impartial . . .” See Section 112.311(1), Florida Statutes. The Legislature further states “that public officers . . . are agents of the people and hold their positions for the benefit of the public. . . . Such officers and employees are bound to observe, in their official acts, the highest standards of ethics consistent with this Code [Code of Ethics] . . . regardless of personal considerations, recognizing that promoting the public interest and maintaining the respect of the people in their government must be of foremost concern.” Section 112.311(6), Florida Statutes.

3. Public Service Commissioners are bound by the standards of conduct contained in Chapter 350, Florida Statutes. Those standards state that a commissioner may not conduct himself in an unprofessional manner at any time during the performance of his official duties. Section 350.041(2)(g), Florida Statutes. Moreover, the oath of office of a Public Service Commissioner requires commissioners to faithfully perform their duties independently, objectively and in a nonpartisan manner. See Section 350.05, Florida Statutes.

4. Public Service Commissioners are also bound, as “agency heads”, by the provisions of Section 120.71, Florida Statutes, which states, in relevant part:

120.71 Disqualification of agency personnel.--

(1) Notwithstanding the provisions of s. 112.3143, any individual serving alone or with others as an agency head may be disqualified from serving in an agency proceeding for bias, prejudice, or interest when any party to the agency proceeding shows just cause by a suggestion filed within a reasonable period of time prior to the agency proceeding.

5. Rules of the Florida Public Service Commission, Rule 25-21.004, Florida Administrative Code, provides that a commissioner may be disqualified from hearing or deciding

any matter where it can be shown that the commissioner has a bias or prejudice for or against any party to the proceeding or a financial interest in its outcome.

6. The Supreme Court of Florida adopted the "Code of Judicial Conduct." It provides the following:

Anyone, whether or not a lawyer, who is an officer of a judicial system performing judicial functions, including an officer such as a referee in bankruptcy, special master, court commissioner, or magistrate, is a judge for the purpose of this code.

Code of Judicial Conduct, "Compliance with the Code of Judicial Conduct."

Canon 1 of the Judicial Code states that an independent and honorable judiciary is indispensable to justice in our society and provides that a judge observe high standards of conduct so that the integrity and independence of the judiciary may be preserved.

Canon 2(A) provides that a judge should respect and comply with the law and conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

Canon 2(B) states that a judge should not allow his personal relationships to influence his judicial conduct or judgment, should not lend the prestige of his office to advance the private interests of others, and should not voluntarily testify as a character witness.¹

¹ The Commentary to this Canon states:

Public confidence in the judiciary is eroded by irresponsible or improper conduct by judges. A judge must avoid all impropriety and appearance of impropriety. He must expect to be the subject of constant public scrutiny. He must therefore accept restrictions on

Canon 3(A)(1) states that a judge “should be unswayed by partisan interests, public clamor, or fear of criticism.”

Canon 3(A)(3) provides that a “judge should be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom he deals in his official capacity”

Canon 3(A)(4) states that a “judge should . . . neither initiate nor consider ex parte or other communications concerning a pending or impending proceeding.

Canon 3(A)(6) directs that:

(6) A judge should abstain from public comment about a pending or impending proceeding in any court, and should require similar abstention on the part of court personnel subject to his direction and control. This subsection does not prohibit judges from making public statements in the course of their official duties or from explaining for public information the procedures of the court.

Canon 3(C)(1) addresses the disqualification of judges and provides:

(1) A judge should disqualify himself in a proceeding in which his impartiality might reasonably be questioned, including but not limited to instances where:

(a) he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;

(b) he served as a lawyer in the matter in

his conduct that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly.

The testimony of a judge as a character witness injects the prestige of his office into the proceeding in which he testifies and may be misunderstood to be an official testimonial. This canon, however, does not afford him a privilege against testifying in response to an official summons.

controversy, . . . or the judge or such lawyer has been a material witness concerning it;

Canon 4 provides that:

A judge, subject to the proper performance of his judicial duties, may engage in the following quasi-judicial activities, if in doing so he does not cast doubt on his capacity to decide impartially any issue that may come before him:

B. He may appear at a public hearing before an executive or legislative body or official on matters concerning the law, the legal system, and the administration of justice, and he may otherwise consult with an executive or legislative body or official, but only on matters concerning the administration of justice.

Canon 7 states that a judge should refrain from political activity inappropriate to his judicial office and specifically states:

4. A judge should not engage in any other political activity except on behalf of measures to improve the law, the legal system, or the administration of justice.

LEGAL STANDARDS FOR DISQUALIFICATION

7. The Supreme Court of Florida has held:

Prejudice of a judge is a delicate question to raise, but when raised as a bar to the trial of a cause, if predicated on grounds with a modicum of reason, the judge against whom raised should be prompt to recuse himself. No judge under any circumstances is warranted in sitting in the trial of a cause whose neutrality is shadowed or even questioned.

Dickenson v. Parks, 140 So. 459, 462 (1932). (Emphasis supplied.)

8. In considering a motion to disqualify the judge is limited to the bare determination of legal sufficiency and may not pass on the truth of the facts alleged. Bundy v. Rudd, 366 So.2d 440 (Fla. 1978). The test for legal sufficiency is whether the facts alleged would prompt a reasonably prudent person to fear that he could not get a fair and impartial trial. A party need not

have personal knowledge of the facts set forth in the motion. Hayslip v. Douglas, 400 So.2d 553 (Fla. 1st DCA 1982).

9. Every litigant is entitled to nothing less than the cold neutrality of an impartial judge. State ex rel. Davis v. Parks, 194 So. 613 (1939).

10. The procedures and standards for disqualification of a judge apply to deputy commissioners for workers' compensation. Hewitt v. Hurt, 411 So.2d 266 (Fla. 1st DCA 1982). More specifically, the Supreme Court of Florida in City of Tallahassee v. Florida Public Service Commission, 441 So.2d 620 (1983) found that:

[t]he standard to be used in disqualifying an individual serving as an agency head is the same as the standard used in disqualifying a judge. S. 120.71, Fla.Stat. (1981).

The Associations submit that these standards, including the interpretive case law, must likewise apply to Public Service Commissioners sitting in a judicial or quasi-judicial capacity and as implicitly contemplated by virtue of the language chosen in Rule 25-21.004, Florida Administrative Code.²

² 25-21.004 Disqualification.

(1) A commissioner may be disqualified from hearing or deciding any matter where it can be shown that the commissioner has a bias or a prejudice for or against any party to the proceeding or a financial interest in its outcome.

(3) A petition for disqualification of a commissioner shall state the grounds for disqualification and shall allege facts supportive of those grounds. The petition shall be filed with the Division of Records and Reporting, and where the commissioner declines to withdraw from the proceeding, a majority vote of a quorum of the full commission, absent the affected commissioner, shall decide the issue of disqualification.

FACTS

11. The facts relied on by the Associations for disqualification include, but are not limited to, the following:

A. As reflected in the attached sworn affidavits of Senator Ginny Brown-Waite, Jim Desjardin, and Michael B. Twomey, Senate Bill 298, sponsored by Senator Brown-Waite, was heard by the Commerce Committee of the Florida Senate on March 7, 1995. SB 298, a copy of which is attached, prohibited any water or sewer customer whose rates were set by the PSC from including a return on investment related to plant, other than common plant, not providing service to that customer. Likewise, SB 298 prohibited the inclusion of operating expenses in a customer's rates, where the expenses, except in the case of common expenses, were not directly necessary to the provision of that customer's water or sewer service. In short, Senator Brown-Waite's bill would have prohibited "uniform rates" of the type imposed by the PSC in Docket No. 920199-WS, which case was then pending appeal in the First District Court of Appeals.

B. As reflected in the attached affidavits, Senator Brown-Waite testified before the Commerce Committee in support of her bill. Likewise, Jim Desjardin, a resident of Sugarmill Woods, past president of the associations and current member of its utility committee, at the invitation of Senator Brown-Waite, testified in support of the bill. As noted earlier, the Sugarmill Woods Civic Association, Inc. is a party to Docket Nos. 920199-WS and 950495-WS. Michael B. Twomey, the undersigned, as attorney to the Spring Hill Civic Association, Inc. and the

Sugarmill Woods Civic Association, Inc., also testified in support of SB 298 at the invitation of Senator Brown-Waite.

C. Also present at the Commerce Committee meeting on March 7, 1995 were Commissioner Diane K. Kiesling and numerous Florida Public Service Commission staff members. Despite her summary statement that she was neutral on the bill, the clear and obvious thrust of Commissioner Kiesling's testimony was that she, and the entire PSC by implication, were adverse to the Senator Brown-Waite's bill and the elimination of uniform rates as a "tool" they could use. There was no reservation on the part of Senator Brown-Waite, Jim Desjardin or Mike Twomey that Commissioner Kiesling wanted SB 298 "killed" in committee.

D. Immediately following the consideration of SB 298, Commissioner Kiesling summoned Mike Twomey to her side in the crowded elevator lobby of the Senate Office Building and, in the presence of some 50 to 80 persons, including Senator Brown-Waite and several of his consumer clients, began to loudly and publicly accuse him of calling her a "liar" on several occasions during his committee testimony on SB 298. In an extremely loud and shrill voice and with the attention of everyone in the room, Commissioner Kiesling berated Mike Twomey for calling her a "liar" and publicly threatened to "get him" with "every legal means at her disposal" if the alleged behavior occurred again. Mike Twomey denies that he ever has called Commissioner Kiesling a liar, let alone during the Commerce Committee meeting. Rather, he believes he was, as he was professionally required to, only vigorously representing the interests of his clients before the legislative

committee and doing so, not only at the request of his clients, but also at the request of their state senator as well.

E. As a consequence of the public rebuke by Commissioner Kiesling, Mike Twomey felt humiliated and embarrassed and questions the ability of his clients (the Associations) to receive a fair and impartial hearing before Commissioner Kiesling on any matter related to either the uniform rate structure or SSU, an adverse party, whose case she seemed to have been pleading before the Senate Commerce Committee on March 7, 1995.

F. Jim Desjardin, as a customer of SSU and a member of the Sugarmill Woods Civic Association, Inc., fears that he and his Association cannot receive a fair and impartial hearing on uniform rates from Commissioner Kiesling, who elected to publicly take the side of the utility before the legislature on an issue that was contested by the Sugarmill Woods Civic Association, Inc. at the PSC, the legislature, and the First District Court of Appeals.

G. Senator Ginny Brown-Waite, who is a customer of SSU and the state senator to some 25,000 customers served by SSU from the Spring Hill systems, fears that both she and her constituents cannot receive a fair and impartial hearing from Commissioner Kiesling because the commissioner improperly interposed herself on one side of a political issue still pending before the PSC and the courts and because she so aggressively publicly attacked Mike Twomey in a manner that was discourteous, rude, impatient and undignified, and clearly unprovoked. Senator Brown-Waite fears that Commissioner Kiesling's testimony and attack on

Mike Twomey demonstrate a clear partisan view toward SSU and the uniform rates the utility is supporting in Docket No. 920199-WS and requesting in Docket No. 950495-WS. She believes Commissioner Kiesling's attack demonstrates a clear bias against Michael B. Twomey that will serve to the detriment of his clients and her constituents.

GROUND FOR DISQUALIFICATION

12. Commissioner Kiesling's unsolicited testimony seeking the defeat of Senator Ginny Brown-Waite's SB 298 destroyed any notion of her impartiality as a commissioner on the issue of uniform rates. Her testimony, which directly opposed the interests of the Associations' members as expressed by their elected state representative, their utility committee member and attorney, supported the position being taken by Southern States Utilities, Inc. Her public opposition to Senator Brown-Waite's bill was impermissible political activity and political comment "about a pending or impending proceeding before any court" and was in the nature of testifying as a character witness on behalf of the uniform rate structure concept. She was clearly engaging in consulting with a legislative body, but on matters that clearly could not be characterized as "only . . . concerning the administration of justice. As such, Commissioner Kiesling's unsolicited testimony before the Florida Senate Commerce Committee clearly and unambiguously constituted "political activity inappropriate to [her] judicial office." Her passionate defense of the uniform rate structure, which has since been stricken by the First District Court of Appeals, leaves the painfully clear impression that the Associations' litigants will get far more "than the cold neutrality of an impartial judge." Commissioner Kiesling's actions in testifying against Senator Brown-Waite's bill leave the Associations with the fear that she is biased and partial and that they cannot,

and likely will not, receive a fair and impartial hearing from her. Consequently, she should either disqualify herself from these proceedings or, failing that, be removed by the other commissioners.

13. Commissioner Kiesling's unwarranted and unprovoked March 7, 1995 public attack on the Associations' attorney Mike Twomey causes the Associations further concern, fear and apprehension that they cannot receive a fair and impartial hearing from Commissioner Kiesling. While his defense of the Associations' interest before the legislative committee may have been critical of the PSC, they were not a direct attack on Commissioner Kiesling. However, even if they were a direct reproach of Commissioner Kiesling, her loud and public reprimand of Mike Twomey before dozens of citizens, including at least one state senator and several of his clients, demonstrated an unprofessional and unreasonable "fear of criticism" and constituted "irresponsible or improper conduct" by a judge. As such, her public display of anger directed at the Associations' attorney directly violated the provisions of Canon 3(A)(3) requiring that a "judge should be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom he deals in his official capacity." The Associations believe and fear that Commissioner Kiesling's open attack on their attorney reveals a "personal bias or prejudice" on her part against their counsel, and ultimately them, that might reasonably call into question her impartiality. Consequently, she should either disqualify herself from these proceedings or, failing that, be removed by the other commissioners.

CONCLUSION

14. The above facts create concern for the integrity and impartiality of the Public Service Commission's decision process in Docket Nos. 920199-WS, 930880-WS, and 950495-WS should Commissioner Kiesling participate in them. Such concerns undermine the public's and

the Associations' confidence in the regulatory process and cannot be allowed. The prejudice or fear of prejudice on the part of Commissioner Kiesling has been raised and raised with more than a "modicum of reason." Commissioner Kiesling's neutrality in these matters has been questioned and has been shadowed and she, under no circumstances is warranted in sitting in the trial of these causes. She should be prompt to recuse herself.

WHEREFORE, Citrus County, the Sugarmill Woods Civic Association, Inc. and the Spring Hill Civic Association, Inc. respectfully move Commissioner Diane K. Kiesling to disqualify herself from the three above-described dockets. Alternatively, failing Commissioner Kiesling's own disqualification, the Associations would respectfully request that the remaining full Commission remove her pursuant to the provisions of Section 120.71, Florida Statutes, and Rule 25-21.004, Florida Administrative Code.

Respectfully submitted,



Michael B. Twomey
Attorney for the Sugarmill Woods Civic Association, Inc. and the Spring Hill Civic Association, Inc., and Citrus County

(904) 421-9530

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 15th day of Sept., 1995 to the following persons:

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

20 North Main Street, Suite 460
Brooksville, Florida 32601

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

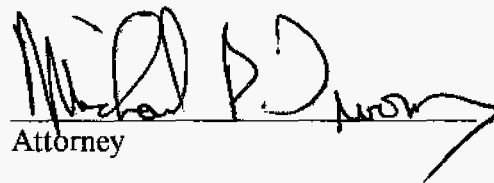
Lila A. Jaber, Esquire
Division of Legal Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0862

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

Bruce Snow, Esquire
County Attorney
Hernando County


Attorney

FLORIDA SENATE - 1995

SB 298

BY Senator Brown-Waite

10-258-95

A bill to be entitled

An act relating to water and wastewater utility rates; amending s. 367.081, F.S.; prohibiting the Florida Public Service Commission from including in a utility customer's rates or charges certain expenses or returns on investments related to certain property; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (a) of subsection (2) of section 367.081, Florida Statutes, 1994 Supplement, is amended to read:

367.081 Rates; procedure for fixing and changing.--

(2)(a) The commission shall, either upon request or upon its own motion, fix rates that which are just, reasonable, compensatory, and not unfairly discriminatory. In every ~~rate-fixing~~ such proceeding, the commission shall consider the value and quality of the service and the cost of providing the service, which must shall include, but ~~is~~ not be limited to, debt interest; the requirements of the utility for working capital; maintenance, depreciation, tax, and operating expenses incurred in the operation of all property used and useful in the public service; and a fair return on the investment of the utility in property used and useful in the public service. The commission may not include in a customer's rates or charges any operating expenses incurred in the operation of any property that is part of a water or wastewater system that is not interconnected with a system providing utility service to that customer or a return on

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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FLORIDA SENATE - 1995
10-258-95

SB 298

1 Investment in property that is part of a water or wastewater
 2 system that is not interconnected with the system providing
 3 utility service to that customer, notwithstanding any common
 4 ownership of the non-interconnected systems. However, the
 5 commission may ~~shall~~ not allow the inclusion of contributions-
 6 in-aid-of-construction in the rate base of any utility during
 7 a rate proceeding; and accumulated depreciation on such
 8 contributions-in-aid-of-construction may ~~shall~~ not be used to
 9 reduce the rate base, nor may ~~shall~~ depreciation on such
 10 contributed assets be considered a cost of providing utility
 11 service. The commission shall also consider the investment of
 12 the utility in land acquired or facilities constructed or to
 13 be constructed in the public interest within a reasonable time
 14 in the future, not to exceed, unless extended by the
 15 commission, 24 months from the end of the historical test
 16 period used to set final rates.

The

Section 2. This act shall take effect July 1, 1995.

SENATE SUMMARY

Prohibits the Florida Public Service Commission from including in a water or wastewater utility customer's rates or charges any operating expenses incurred in the operation of, or a return on investment in, property that is a part of a water or wastewater system that is not interconnected with the system providing utility service to the customer.

CODING: Words stricken are deletions; words underlined are additions.

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TOTAL 002

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AFFIDAVIT FOR VERIFICATION OF DISQUALIFICATION

State of Florida
County of Leon

BEFORE ME, the undersigned authority, personally appeared Jim Desjardin, who after being first duly sworn, deposes and says according to his personal knowledge as follows:

I am Jim Desjardin, of 14 Balsam Court West, Homosassa, Florida, 34446. I am a member of the Sugarmill Woods Civic Association, Inc., a past president of the association and a member of its Utility Committee. I reside in Sugarmill Woods and am a water and sewer customer of Southern States Utilities, Inc.'s ("SSU") Sugarmill Woods water and sewer operations. The Sugarmill Woods Civic Association, Inc. is a party to Florida Public Service Commission Docket Nos. 920199-WS, 930880-WS and 950495-WS. These dockets directly or implicitly involve SSU's approval to charge its customers, including those of us at Sugarmill Woods, the so-called "uniform rate" structure. The uniform rate structure is a simple cost and rate averaging methodology that charges customers of non-interconnected and geographically dispersed water and sewer systems identical water and/or sewer rates without any regard for the costs associated with serving them. The concept requires SSU's customers at Sugarmill Woods to pay annual subsidies, exceeding the costs of our service, of over \$600,000. A uniform rate structure was imposed on 127 SSU water and sewer systems in Docket No. 920199-WS over the objections of the Sugarmill Woods Civic Association, Inc. We appealed the final PSC order approving uniform rates to the First District Court of Appeals and oral arguments were heard by that Court on January 10, 1995.

On March 7, 1995, at the request of the Associations and at the invitation of Senator Ginny Brown-Waite, I spoke in favor of Senate Bill 298 before the Florida Senate Commerce Committee. Senate Bill 298 effectively proscribed the uniform rate concept by prohibiting the PSC from

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including in any customer's water or sewer rates costs, other than allocated "common costs" that were not directly related to, or necessary to, the utility service being provided to that customer. Senator Brown-Waite addressed the Committee and introduced her bill. I spoke in favor of the bill, reciting how uniform rates unfairly forced me and my neighbors, most of whom are either retirees or low-income young families, to pay large subsidies to support the utility services SSU is providing to distant systems.

Commissioner Diane Kiesling addressed the Committee and spoke forcefully against Senator Brown-Waite's bill and in favor of the uniform rate structure. She dismissed my concerns and spoke on the necessity of retaining uniform rates as a means to achieving affordable rates and for financing large capital construction projects without imposing rate shock on the customers.

Mike Twomey, our attorney in Docket No. 950495-WS and an attorney representing the Citrus County Board of County Commissioners in Docket No. 920199-WS, followed Commissioner Kiesling and spoke in favor of Senator Brown-Waite's bill. He stated that the uniform rate concept unfairly forced a portion of SSU's customers to subsidize the utility services of other SSU customers and that such a practice was unconstitutional, illegal, and resulted in undue rate discrimination.

Immediately following the presentation of Senate Bill 298 my wife and I went upstairs to Senator Brown-Waite's office. When Senator Brown-Waite and Mike Twomey arrived a discussion ensued regarding Commissioner Kiesling publicly accusing Mike Twomey of calling her a liar during the committee meeting. and several Associations members waiting to catch an elevator when Commissioner Kiesling loudly called ~~me~~^{MIKE} to her side. I did not personally witness AD the Commissioner Kiesling accusing Mike Twomey of calling her a liar, but, if it is true that she did, I have great concerns and reservations that I and the Sugarmill Woods Civic Association, Inc.

will be able to receive a fair and impartial hearing before Commissioner Kiesling while we are represented by Mike Twomey in Docket No. 950495-WS.

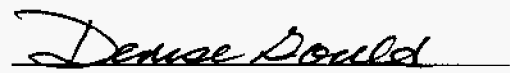
I am equally fearful and have grave reservations regarding Commissioner Kiesling's impartiality on the issue of uniform rates. The Sugarmill Woods Civic Association, Inc. has obtained a reversal of the PSC's final order imposing uniform rates in Docket No. 920199-WS, but the PSC will soon consider how to comply with the Court's mandate in that case. The PSC staff has recommended that the record be reopened and that SSU be allowed to present new evidence that will allow for the retroactive approval of the existing uniform rates until they were initially imposed in September, 1993. Given Commissioner Kiesling's forceful and unqualified support for uniform rates before the Senate Commerce Committee, I am fearful that she cannot approach the current staff recommendation in Docket No. 920199-WS with an open mind and afford my neighbors and I a fair and impartial hearing. Likewise, I am fearful that Commissioner Kiesling's public and political support for uniform rates will preclude us receiving a fair and impartial hearing in Docket No. 950495-WS in which SSU has again sought uniform rates notwithstanding the First District Court of Appeals reversal of that rate structure in Docket No. 920199-WS.

FURTHER, AFFIANT SAYETH NAUGHT.

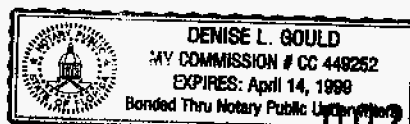

Jim Desjardin

Sworn to and subscribed before me this 12 day of September, 1995, by Jim Desjardin, who is ___ personally known to me, or by identification, and did take an oath.

DL# D26345625 176


Notary Public, State of Florida at Large
My Commission Expires:

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AFFIDAVIT FOR VERIFICATION OF DISQUALIFICATION

State of Florida
County of Leon

BEFORE ME, the undersigned authority, personally appeared Michael B. Twomey, who after being first duly sworn, deposes and says according to his personal knowledge as follows:

I am Michael B. Twomey of Route 28, Box 1264, Tallahassee, Florida 32310. I am an attorney licensed to practice in the State of Florida and am the attorney of record to the Sugarmill Woods Civic Association, Inc. and the Spring Hill Civic Association, Inc. ("the Associations") in one or more of the following matters before the Florida Public Service Commission: Docket Nos. 920199-WS, 930880-WS, and 950495-WS. Each of these dockets directly involves Southern States Utilities, Inc. ("SSU"), the water and sewer utility serving the members of the Associations, and either directly or implicitly involves the issue of imposing a so-called "uniform rate" structure on SSU's customers, including the members of the Associations. The uniform rate structure is a simple cost and rate averaging methodology that charges customers of non-interconnected and geographically dispersed water and sewer systems identical water and/or sewer rates without any regard for the costs associated with serving them. The concept inherently requires some SSU customers, including the members of the Associations, to subsidize the utility services of other SSU customers at levels that are unduly discriminatory. A uniform rate structure was imposed on 127 SSU water and sewer systems in Docket No. 920199-WS over the objections of the Associations and with the concurrence of SSU. The PSC final order was appealed to the First District Court of Appeals and oral arguments were heard by the Court on January 10, 1995.

On March 7, 1995, at the request of the Associations and at the invitation of Senator Ginny Brown-Waite, I spoke in favor of Senate Bill 298 before the Florida Senate Commerce Committee. Senate Bill 298 effectively proscribed the uniform rate concept by prohibiting the PSC from

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including in any customer's water or sewer rates costs, other than allocated "common costs" that were not directly related to, or necessary to, the utility service being provided to that customer. Senator Brown-Waite addressed the Committee and introduced her bill. Jim Desjardin, a past President of the Sugarmill Woods Civic Association, Inc. and a member of its Utility Committee, spoke in favor of the bill, reciting how uniform rates unfairly forced he and his neighbors, most of whom were either retirees or low-income young families, to pay large subsidies to support the utility services SSU was providing to distant systems.

Commissioner Diane Kiesling addressed the Committee and spoke forcefully against Senator Brown-Waite's bill and for the retention of the uniform rate structure as a necessary tool for the PSC to have available. She spoke at some length and in such a forceful manner that she clearly annoyed some members of the Committee.

I followed Commissioner Kiesling and spoke in favor of the bill. I stated that the uniform rate concept unfairly forced a portion of SSU's customers to subsidize the utility services of other SSU customers and that such a practice was unconstitutional, illegal, and resulted in undue rate discrimination.

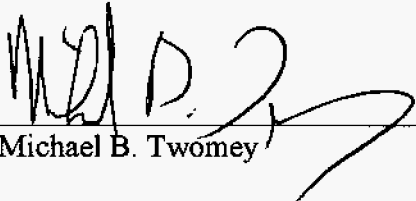
Immediately following the presentation of Senate Bill 298, I was standing with Senator Brown-Waite and several Associations members waiting to catch an elevator when Commissioner Kiesling loudly called me to her side. When I joined her, she stated in an extremely loud voice that I had "three times called her a liar" and that "she would use every legal means available to her to stop me if I called her a liar again." I denied having called her a liar and a short discussion ensued. By this time, the level of Commissioner Kiesling's voice, her tone and the nature of her accusations had caught the attention of virtually everyone of the dozens of people in the Senate Office Building first floor elevator lobby. After a brief exchange in which I protested my

innocence of her charges, Commissioner Kiesling and her entourage of staff persons departed.

I was clearly shaken, embarrassed and humiliated by the experience. Normally reasonably "quick on my feet", I was rendered virtually speechless by what I considered a rude, discourteous, and thoroughly unprovoked public attack by Commissioner Kiesling. I felt the need to defend myself to both Senator Brown-Waite and my clients, who, fortunately, also expressed shock and outrage at Commissioner Kiesling's conduct.

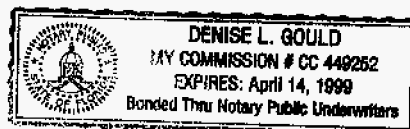
Since that incident, I have questioned and continue to question Commissioner Kiesling's impartiality on the issue of uniform rates, which remains a hotly contested and critical issue in all of SSU's pending and impending rate cases. I have concluded that she is not, and cannot be, impartial on an issue she so forcefully spoke in favor of before the Senate Commerce Committee. Furthermore, I fear that the unprovoked public attack on me on March 7, 1995 by Commissioner Kiesling reveals a strong bias against either me, my clients, or both, that will preclude my clients receiving a fair and impartial hearing before Commissioner Kiesling in Docket Nos. 920199-WS, 930880-WS and 950495-WS.

FURTHER, AFFIANT SAYETH NAUGHT.


Michael B. Twomey

Sworn to and subscribed before me this 12 day of September, 1995, by Michael B. Twomey, who is personally known to me, or by identification, and did take an oath.


Notary Public, State of Florida at Large
My Commission Expires:



AFFIDAVIT FOR VERIFICATION OF DISQUALIFICATION

State of Florida
County of Leon

BEFORE ME, the undersigned authority, personally appeared Ginny Brown-Waite, who after being first duly sworn, deposes and says according to her personal knowledge as follows:

I am Senator Ginny Brown-Waite, Senator, 10th District, The Florida Senate, 20 North Main Street, Room 200, Brooksville, Florida 34601. My constituents include the residents of the Spring Hill community, all of whom are served by Southern States Utilities, Inc. ("SSU"). I own property in Spring Hill, my tenants are customers of SSU, and I remain a member of the Spring Hill Civic Association, Inc.

During the 1995 legislative session, I filed Senate Bill 298 for the purpose of stopping the PSC from charging any customers rate subsidies to support utility services that were being provided to other distant customers at non-interconnected water and sewer systems owned by SSU. On March 7, 1995, Senate Bill 298 was considered before the Senate Commerce Committee. I introduced the bill and spoke in favor of its adoption. At my request Jim Desjardin of the Sugarmill Woods Civic Association, Inc. and Michael B. Twomey, a private attorney representing Citrus County, the Sugarmill Woods Civic Association, Inc. and the Spring Hill Civic Association, Inc. in several PSC dockets concerning SSU and the uniform rates, attended the Committee meeting and spoke in favor of my bill.

PSC Commissioner Diane Kiesling also addressed the Committee and spoke forcefully against my bill and in favor of the uniform rate structure. She dismissed my concerns and those of my constituents regarding the unfairness of uniform rates and spoke on the necessity of retaining uniform rates as a means to achieving affordable rates and for financing large capital construction projects without imposing rate shock on the customers. I had not solicited Commissioner

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Kiesling's attendance or comments at the Committee meeting and am not aware that any other Senator invited her to speak on the bill. She was clearly against my bill, for uniform rates, and lent both the prestige and apparent expertise of herself and the PSC to the effort of killing my bill.

Immediately following the presentation of Senate Bill 298, Mike Twomey, several of my constituents and I were waiting to get an elevator to go to my office when Commissioner Kiesling called Mike Twomey over in a loud voice and began rudely chastising him for calling her a liar during the Committee meeting. Commissioner Kiesling stuck her finger in Mike Twomey's face, and that, combined with her volume, tone of voice and the shrill nature of her accusations caught the attention of virtually everyone in that part of the building and quickly made her confrontation with Twomey the center and only attraction. Her accusations were unprofessional of any lawyer, let alone one charged with being an agency head. Furthermore, her accusations that Twomey had called her a liar during the Committee meeting were completely unfounded. Twomey was, in my opinion, merely making a strong case for the elimination of the uniform rate concept and in that regard was vigorously representing the interests of his clients and my constituents.


I have great concerns and reservations that I and my constituents will be able to receive a fair and impartial hearing before Commissioner Kiesling while we are represented by Mike Twomey in Docket No. 950495-WS. I am equally fearful and have grave reservations regarding Commissioner Kiesling's apparent lack of impartiality on the issue of uniform rates. The Sugarmill Woods Civic Association, Inc. and Citrus County have obtained a reversal of the PSC's final order imposing uniform rates in Docket No. 920199-WS, and the PSC will soon consider how to comply with the Court's mandate in that case. The PSC staff has recommended that the record of that case be reopened and that SSU be allowed to present new evidence that will allow for the retroactive approval of the existing uniform rates until they were initially imposed in

September, 1993. Given Commissioner Kiesling's forceful and unqualified support for uniform rates before the Senate Commerce Committee, I am fearful that she cannot approach the current staff recommendation in Docket No. 920199-WS with an open mind and, thereby, afford my constituents and I a fair and impartial hearing. Likewise, I am fearful that Commissioner Kiesling's public and political support for uniform rates will preclude us from receiving a fair and impartial hearing in Docket No. 950495-WS, in which SSU has again sought uniform rates notwithstanding the First District Court of Appeals' reversal of that rate structure in Docket No. 920199-WS.

FURTHER, AFFIANT SAYETH NAUGHT.


Ginny Brown-Waite

Sworn to and subscribed before me this 12th day of September, 1995, by Ginny Brown-Waite, who is personally known to me, or by identification, and did take an oath.


Notary Public, State of Florida at Large
My Commission Expires:



DIANE W. GREGG
MY COMMISSION # CC376313 EXPIRES
June 29, 1998
BONDED THRU TROY FAIR INSURANCE, INC.