BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application for rate increase and increase in service availability charges by Southern States Utilities, Inc. 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.	DOCKET NO. 950495-WS ORDER NO. PSC-97-0099-FOF-WS ISSUED: January 27, 1997

The following Commissioners participated in the disposition of this matter:

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

ORDER GRANTING IN PART AND DENYING IN PART
MOTION FOR STAY AND
REQUIRING RENEWAL OF BOND

BY THE COMMISSION:

BACKGROUND

Southern States Utilities, Inc. (SSU or utility) is a Class A utility, which provides water and wastewater service to 152 service areas in 25 counties. On June 28, 1995, SSU filed an application for approval of uniform interim and final water and wastewater rate increases for 141 service areas in 22 counties, pursuant to Sections 367.081 and 367.082, Florida Statutes, respectively. The utility also requested a uniform increase in service availability charges, approval of an allowance for funds used during construction (AFUDC) and an allowance for funds prudently invested (AFPI). August 2, 1995, was established as the official date of filing.

By Order No. PSC-95-1327-FOF-WS, issued November 1, 1995, we denied SSU's initial request for interim rate relief based on a projected test year, suspended the proposed final rates, and

allowed the utility to file another petition for interim rates. SSU filed its supplemental petition for interim revenue relief on November 13, 1995 which was granted by Order No. PSC-96-0125-FOF-WS (Interim Order), issued January 25, 1996, based upon the historical test year ended December 31, 1994. The Interim Order required SSU to post security as a condition for collecting interim rates, and SSU did so by filing a bond in the amount of $5,864,375. That bond was scheduled to be renewed or expire on January 8, 1997.

On October 30, 1996, we issued Order No. PSC-95-1320-FOF-WS, (Final Order) on the rate proceeding. On November 1, 1996, SSU filed a notice of appeal of the Final Order with the First District Court of Appeal. On November 14, 1996, several intervening parties filed a joint motion for reconsideration with this Commission. On that same date, those parties filed a motion for relinquishment of jurisdiction with the First District Court of Appeal so that the Commission could consider the motion for reconsideration. SSU did not object to the motion to relinquish jurisdiction, and on November 26, 1996, filed a cross-motion for reconsideration with the Commission. On December 2, 1996, the First District Court of Appeal issued an order abating the appeal pending the disposition of the motions for reconsideration.

Pursuant to Rule 9.310(a), Florida Rules of Appellate Procedure, we have continuing jurisdiction to review requests for stay pending appellate review. On December 3, 1996, SSU filed a Motion to Stay Refund of Interim Rates and Reduction to AFPI Charges Pending Appeal and Motion to Release/Modify Bond Securing Refund of Interim Rates (Motion). SSU requested expedited review of the Motion because of the pending expiration of the bond on January 8, 1997. OPC filed a response in opposition to SSU's motion.

STAY OF REFUND OF INTERIM RATES

SSU requested a stay of the refund of a portion of the interim rates, specifically, those collected from the Lehigh and Marco Island service areas. The Final Order required SSU to refund, with interest, 5.69 percent and 27.53 percent of the wastewater revenues collected from Lehigh and Marco Island, respectively. Citing Rule 25-22.061(1)(a), Florida Administrative Code, SSU contended that because the Final Order requires a refund, we must grant its request to stay the refund of interim rates.

Rule 25-22.061(1)(a) requires a mandatory stay "when the order being appealed involves the refund of moneys to customers or a decrease in rates charged to the customers". We therefore find it appropriate to grant SSU's request for a stay as to the refund of

interim rates relating to Lehigh and Marco Island. The appropriate security for the duration of the stay is addressed below.

STAY OF AFPI CHARGES

The Final Order established AFPI charges for those SSU facilities which were below 100 percent used and useful. The calculations were based upon Rule 25-30.434, Florida Administrative Code. We approved SSU's request to cap AFPI charges for two separate situations. However, we denied SSU's request to allow it to maintain existing AFPI charges in instances where the revenues would be greater than the new AFPI charges that would result from the calculations. The Final Order cancelled SSU's prior AFPI charges as of January 1, 1997. SSU stated that it intends to appeal the Commission's decision regarding the reduction of AFPI charges.

SSU first contended that AFPI charges are comparable to rates charged to customers, and therefore, a stay is mandatory under Rule 25-22.061(1)(a). We do not find that Rule 25-22.061(1)(a) contemplates AFPI charges, which are, as the utility acknowledged, service availability charges. Rule 25-22.061(1)(a) refers to rates only, not rates and charges. Service availability charges are granted pursuant to a separate statutory provision than rates. Therefore, SSU is not entitled to a mandatory stay.

While the rule does not specifically address a distinction between rates and charges, this Commission has made a distinction between the two for the purposes of appeal. By Order No. PSC-95-1431-FOF-WS, issued November 27, 1995, in Docket No. 940963-SU, we addressed an appeal by a public entity. We found that an appeal relating to service availability charges did not involve rates, and therefore, did not invoke a mandatory stay.

SSU requested that, in the alternative, a discretionary stay be imposed pursuant to Rule 25-22.061(2), Florida Administrative Code. That rule specifies several factors which this Commission may consider in granting a discretionary stay. SSU incorporated those factors into its request. SSU intends to appeal the reduction of SSU's previously approved AFPI charges, and believes that it is likely to succeed on that point. SSU argued that it will suffer irreparable harm if a stay is not imposed. It contended that collection of increased AFPI charges, if the utility is successful on appeal, would be difficult. Once a developer has completed a project, SSU alleges that it would face problems in collecting the charges, especially because disconnection of service would not be viable in many cases. SSU also alleged that a delay in SSU's ability to collect its previously authorized AFPI charges would

cause difficulties in collecting any backbilled charges. According to the utility, "recovery of its prudent costs is essential to SSU's financial health and its ability to provide service to its customers."

SSU requested that we stay the reduction of certain AFPI charges, and proposed two alternate methods for staying the reduction:

> a. As its primary and preferred request, SSU requests that it be allowed (1) to assess the higher of the AFPI charges SSU requested in its filing or those the Commission approved for plants where SSU requested no change in AFPI charges and (2) to implement the Commission-approved charges for the remaining plants. Attachment C of the Motion reflects the AFPI charges SSU proposes to collect pursuant to this request. SSU alleges that this request would provide it the ability to collect amounts adequate for recovery of previously and currently approved carrying costs on prudent investment, as well as generate funds sufficient for a refund, if necessary, after appeal.
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> b. Alternatively, SSU requests that it be allowed to retain its pre-rate case AFPI tariffs for those plants where SSU requested no change in AFPI and implement the Commission-approved AFPI charges for all remaining plants. Attachment D of the Motion reflects the proposed charges. SSU argues that this method would allow SSU to assess AFPI charges in accordance with SSU's pre-rate case tariffs in those cases where SSU requested such, and AFPI for all remaining plants will be implemented as the Commission has approved.

SSU also noted that the AFPI schedules attached to the Final Order contain omissions and arithmetic calculation errors.

After careful consideration of SSU's proposal, we deny SSU's request to impose a stay of the reduction of AFPI charges. SSU's request exceeds the general purpose of a stay, which is intended to stop or suspend the effectiveness of an order or an action to be taken. We initially observe that a stay of service availability charges is discretionary. We may examine the three factors listed in Rule 25-22.061(2), or any other factors, but are ultimately not required to impose a stay.

SSU's request is unusual in that the utility has not asked that the entire ruling as to AFPI charges be stayed, but only those

charges which have been reduced. While in the past we have stayed portions of orders which relate to a particular subject, SSU here sought to stay some of the AFPI charges, while implementing others.

SSU proposed two alternate methods which involve implementing some, but not all, of the approved AFPI charges. In essence, the utility proposed to choose which charge it should implement. In the Final Order, we denied SSU's request to keep previously approved AFPI charges if they were higher than the new calculations. By granting the partial stay, we would in effect be reconsidering the denial of SSU request to implement some of the older charges.

There are other difficulties with SSU's proposal which make the request for stay inappropriate. Several of the charges identified in the utility's attachment were not addressed in the Final Order, or were not a part of SSU's initial filing. For example, in some instances the utility assumed a facility to be 100 percent used and useful in its filing, and therefore, did not request an AFPI charge. We determined that the facility was less than 100 percent used and useful, but failed to specifically authorize an AFPI charge in the Final Order. In other cases SSU requested an AFPI charge for a facility, but the Final Order failed to include it. This situation is further complicated by the fact that some omitted facilities had prior AFPI charges, and others did not.

Our analysis of the schedules attached to SSU's Motion also revealed that for some facilities SSU has requested that the higher charge remain into effect until the lower charge escalates to a point where it increases above the other charge. For example, for Citrus Springs wastewater treatment and disposal, we authorized an escalating schedule of AFPI charges, beginning at $3.60 for January of 1997 (Final Order, page 1032). SSU's proposed implementation of AFPI under its Alternate 1 indicated that the pre-rate case tariff charge of $120.17 is used until August of 1999, when the escalating charge approved in the Final Order begins to exceed that amount. This "switching" of the charge structure was not previously presented to this Commission or contemplated in the Final Order.

SSU's proposal clearly exceeds the purpose and function of a stay. By granting either one of SSU's proposals, we would not just be staying the effectiveness of the Final Order, but materially changing that order. Those charges for facilities that SSU requested in its filing but were not addressed by the Commission the Final Order may be addressed by the Commission when it takes up the Final Order on reconsideration. However, the implementation of

a partial stay is not the appropriate method of correcting those alleged omissions.

Moreover, it is not appropriate to stay the effect of the Final Order as to some, but not all, of the AFPI charges. The AFPI issue is complex, and we may revisit those findings on our own motion when reconsideration of the Final Order is addressed. Our staff has indicated that errors have been made in the calculation of AFPI charges, and will likely recommend reconsideration of those charges. However, SSU's Motion for a partial stay of the imposition of AFPI charges is not the appropriate vehicle to address calculation errors or mistakes of fact or law. Therefore, SSU's motion for a partial stay of AFPI is denied.

We acknowledge that the denial of the stay may lead to a potential need to backbill those customers that connect during the pendency of appeal, if the utility is successful in its appeal and the court reverses the Final Order as to AFPI. SSU's proposals would allow the utility to collect the highest possible AFPI charges, thereby putting the utility in the position of possibly having to make refunds, but removing the possibility of backbilling. However, even if the utility were to seek a full stay of the Final Order regarding AFPI charges, the potential for backbilling would exist. While this is a valid concern, for the reasons set forth above, we cannot grant a partial stay under the alternates proposed by SSU.

In order to alleviate some potential difficulty in the event of backbilling, the utility shall place a customer or developer on notice upon connection and assessment of the charge that the AFPI charges are the subject of a pending appeal, and may increase or decrease, dependent upon the final outcome of the appeal.

BOND TO SECURE POTENTIAL INTERIM REFUND

By letter dated January 10, 1996, SSU filed a bond in the amount of $5,864,375 to secure any potential interim revenue refunds. As noted herein, the Final Order required SSU to refund, with interest, all interim water and wastewater revenues collected from its Enterprise service area, 5.69 percent of wastewater interim revenues collected from Lehigh, and 27.53 percent of wastewater interim revenues collected from Marco Island. According to the utility, the interim water and wastewater refunds ordered to Enterprise will not be appealed.

In its motion, SSU requested that the bond securing any potential interim refund should be modified to lower the amount from $5,864,375 to $2,500,000. This amount included any potential

refunds of AFPI charges. SSU further indicated that reducing the current bond to $2.5 million would save SSU $9,114. SSU has estimated approximately $1.25 million in AFPI potential refunds with interest over an 18 month period. No supporting calculations of AFPI charges were provided.

In its response in opposition to SSU's motion, OPC stated that if the First District Court of Appeal relinquishes jurisdiction, OPC intends to seek reconsideration of the decision to deny interim refunds to all facilities that were part of Docket No. 920199-WS. OPC also intends to raise this issue in the pending appeal.

Because there are pending motions for reconsideration and pending appeals, we conclude that it would be inappropriate to grant SSU's Motion to release or modify its current bond securing any potential interim refund. Therefore, SSU's motion to modify the bond is denied.

Order No. PSC-96-0125-FOF-WS, issued January 25, 1996, indicated that the appropriate security for interim rates was $5,864,375. This calculated amount assumed a 10 month interim revenue collection period. SSU implemented its interim rates on January 23, 1996 and its final rates on September 20, 1996. The total potential interim refund for this 8 month period was recalculated to be $4,648,169, with interest. This amount was used in order to calculated interest for the appeal period. Assuming a two year appeal time, we find the final potential interim refund to be $5,157,887. Consistent with our findings, potential AFPI refunds have not been included in these calculation.

Therefore, in order to adequately protect the customers of SSU, the bond securing any potential interim refund shall not be released or modified. Therefore, the current bond shall be renewed on or before January 8, 1997, the date of expiration. Further, pursuant to Rule 25-30.360(6), Florida Administrative Code, SSU shall continue to provide a report by the 20th of each month indicating the total amount of money subject to refund and the status of the security.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the motion to stay refund of interim rates filed by Southern States Utilities, Inc., is hereby granted. It is further

ORDERED that the motion to stay the reduction of AFPI charges filed by Southern States Utilities, Inc. is denied as set forth in the body of this Order. It is further

ORDERED that Southern States Utilities, Inc., shall renew its current bond posted to secure potential refunds in this matter, on or before January 8, 1997. It is further

ORDERED that Southern States Utilities, Inc., shall continue to provide a report by the 20th of each month indicating the total amount of money subject to refund and the status of the security.

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

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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.

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.