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REPLY TO: Tallahassee

April 14, 1993

Mr. Steve Tribble, Director
Division of Records and Reporting
Florida Public Service Commission
101 East Gaines Street
Tallahassee, Florida 32399-0850

HAND DELIVERY

Re: FPSC Docket No. **920199-WS**

Dear Mr. Tribble:

Enclosed for filing in the above-referenced docket are the following documents:

1. Original and fifteen copies of Southern States' Response to Motions for Reconsideration filed by Public Counsel, Cova and Citrus County; and,

2. A disk containing a copy of the document in Word Perfect 5.1 entitled "Giga.answer."

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

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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 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: April 14, 1992

SOUTHERN STATES' RESPONSE TO MOTIONS FOR RECONSIDERATION FILED BY PUBLIC COUNSEL, COVA AND CITRUS COUNTY

SOUTHERN STATES UTILITIES, INC. ("Southern States"), by and through its undersigned counsel, and pursuant to pertinent provisions of Rule 25-22.060, Florida Administrative Code, hereby files its Response to the Motions for Reconsideration of Order No. PSC-93-0423-FOF-WS ("Final Order") filed by OFFICE OF PUBLIC COUNSEL ("Public Counsel"), CYPRESS AND OAK VILLAGES ASSOCIATION ("COVA") and CITRUS COUNTY. In support of its Response, Southern States states as follows:

A. INTRODUCTION AND APPLICABLE STANDARD OF REVIEW

1. Public Counsel's Motion requests the Commission to reconsider its decisions: (a) that Southern States' shareholders are entitled to retain the gain on the condemnation of the St. Augustine Shores water system, except for adjustment reducing administrative and general ("A&G") expenses which would have otherwise been allocated to the former St. Augustine Shores' customers; and (b) rejecting Public Counsel's proposed negative acquisition adjustment. COVA and Citrus County request the Commission to reconsider its decision to implement statewide

uniform rates for the systems included in this proceeding. COVA also suggests that the Commission's adjustment for property tax expense applicable to the Sugarmill Woods system's non-used and useful property was not accurate although no specific request for reconsideration was made.

2. The Intervenors' Motions for Reconsideration are without merit. The Motions ignore the threshold requirements imposed by law which govern the Commission's consideration and disposition of motions for reconsideration.

3. The Supreme Court of Florida on several occasions has reiterated the legal standard encompassing the limited circumstances under which reconsideration of a final order is appropriate. In Diamond Cab Company of Miami v. King, 146 So.2d 889, 891 (Fla. 1962), the Court held:

> The purpose of a petition for rehearing is merely to bring to the attention of the trial court or, in this instance, the administrative agency, some point which it overlooked or failed to consider when it rendered its order in the first instance. (Citations omitted). It is not intended as a procedure for re-arguing the whole case merely because the losing party disagrees with the judgement or the order.

See also, Pingree v. Quaintance, 394 so.2d 161 (Fla. 1st DCA 1981).

4. The Supreme Court of Florida also has established the means by which a party may establish that reconsideration is appropriate under the standard set forth in the Diamond Cab Company and Pingree decisions. In Stewart Bonded Warehouse, Inc. v. Bevis, 294 So.2d 315, 317 (Fla. 1974), the Court held that a petition for reconsideration (and the granting thereof)

> [s]hould not be based upon an arbitrary feeling that a mistake may have been made, but should be based upon specific factual matters set forth in the record and susceptible to review. [Emphasis supplied.]

B. GAIN ON CONDEMNATION

5. Apart from the aforementioned adjustment for A&G expenses, the Final Order reflects the Commission's acceptance of Mr. Sandbulte's testimony outlining numerous reasons in support of the determination that Southern States' shareholders should retain the gain on the condemnation of the St. Augustine Shores water system. These reasons, at pp. 56-59 of the Final Order, include:

a. St. Augustine Shores always has been treated on a stand alone basis for ratemaking purposes. Therefore, Southern States' remaining ratepayers contributed nothing to Southern States' recovery of its investment in the St. Augustine Shores water system and they bore none of the risk of any loss;

b. At the time of condemnation, the St. Augustine Shores system was regulated by St. Johns County and was not under Florida Public Service Commission jurisdiction; and

c. When the system was acquired by St. Johns County, Southern States' investment in the system and its future contributions to profit were forever lost, hence, the gain on the condemnation serves to compensate Southern States' shareholders for the loss of future earnings.

6. The Final Order is consistent with the rationale applied by the Commission in numerous past proceedings involving the ratemaking treatment of a gain on the sale of assets. In past

proceedings where the Commission has required utilities to share a gain, the facts demonstrate that the gains were realized on: (a) the sale of assets, as distinguished from a condemnation[1]; and (b) the sale of rate base assets such that remaining ratepayers had contributed through their rates to recovery of depreciation expenses and/or a return on the utility's investment.[2] However, none of the decisions entered in these proceedings involved the condemnation of assets where remaining ratepayers had contributed nothing to the utility in the form of return on investment or depreciation expense recovery. Indeed, prior Commission orders reflect that the Commission has recognized this distinction by permitting the utility to retain the gain on the sale of non-rate base assets.[3]

7. Public Counsel requests reconsideration of the Commission's decision on this issue by reference to Hearing Exhibit No. 24 (Order No. 17168 issued February 10, 1987) and by attempting

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[1]Legal research revealed no prior Commission orders addressing the factors raised by a condemnation of rate base or non-rate base assets. The factors raised by a condemnation of non-rate base assets are addressed for the first time in the Final Order and clearly support shareholder retention of a condemnation gain due to the loss of future revenue streams.

[2]See Florida Power & Light Company, 81 FPSC Rep. 9:240 (Order No. 10306, Sept. 23, 1981); Gulf Power Company, 82 FPSC Rep. 2:7 (Order No. 10557, Feb. 1, 1982); Tampa Electric Company, 82 FPSC Rep. 11:64 (Order No. 11307, Nov. 10, 1982); and, Florida Power Corporation, 83 FPSC 2:148 (Order No. 13771, Oct. 12, 1984).

[3]See GTE, Florida Inc., 90 FPSC Rep. 7:73, 74 (Order No. 23143, July 3, 1990); and, Florida Power Corporation, 83 FPSC 2:148 (Order No. 11628, Feb. 17, 1983) (gain on sale of property allocated in part to shareholders based on ratio of number of years property not in rate base over the total years the company owned the property).

to draw an analogy between a condemnation of a stand-alone, non-Commission regulated system (St. Augustine Shores) and an abandonment of Commission regulated rate base property. Neither ground has merit.

8. Public Counsel's reliance on Order No. 17168, a case involving Southern States' request for rate relief for Lake County systems, is both procedurally and substantively defective. Public Counsel's posthearing brief makes no mention whatsoever of Order No. 17168. The argument based on Order No. 17168 appears for the first time in its Motion for Reconsideration. As Public Counsel is well aware from its discovery disputes with Southern Bell in Docket No. 900633-TL, and as recently held by the Commission in that docket in denying a motion for reconsideration filed by Southern Bell:

> Neither new arguments nor better explanations are appropriate matters for reconsideration.

See Order No. PSC-92-0132-FOF-TL issued March 31, 1992, at 2.

The Commission's prohibition against offering new arguments in motions for reconsideration is consistent with the legal standard applicable to such motions, i.e., motions for reconsideration are not a vehicle for attempting new arguments where a party's initial arguments in its posthearing brief were not accepted. Accordingly, as a matter of law, Public Counsel's reliance on Order No. 17168 is procedurally defective and inappropriate for consideration by the Commission in a request for reconsideration of the Final Order.

9. In addition, even though it neglected to discuss Order No. 17168 in its posthearing brief, Public Counsel takes umbrage

with the Commission for failing to address Order No. 17168 in the Final Order. Public Counsel's attempt to fault the Commission for not addressing arguments not brought to its attention in Public Counsel's posthearing brief should be rejected. In any event, the Supreme Court of Florida has held that the Commission is not required to include in its Final Order "a summary of the testimony it heard or a recitation of every evidentiary fact on which it ruled." Occidental Chemical Co. v. Mayo, 351 So.2d 336, 341 (Fla. 1977). Hence, as a matter of law, the Commission is not required to state every evidentiary fact supporting its decision. Likewise, there is no legal requirement that the Commission address every evidentiary fact which it did not rely upon or rejected in reaching its decision.

10. From a substantive standpoint, Order No. 17168 is clearly an aberration when compared with the rationale and policy reflected in a long line of Commission decisions, including those discussed and cited earlier in paragraph 6 of this Response. Public Counsel neglects to point out that Order No. 17168 was a proposed agency action ("PAA") order which apparently was challenged by Public Counsel[4] and ultimately resulted in Order No. 17642 issued June 2, 1987 consummating Order No. 17168 as a final order. Hence, for whatever reasons it had at the time, Public Counsel chose not to pursue reversal of the Commission's decision requiring ratepayers to absorb the loss on the sale (not condemnation) of the Skyline

[4]See 87 FPSC 2:304, Order No. 17227 issued February 27, 1987 Granting Citizens' Motion to Increase the Number of Initial Interrogatories. This Order was issued after PAA Order No. 17168.

Hills water system to the Town of Lady Lake. Second, Order No. 17168 is inconsistent with the positions expressed by Public Counsel, Southern States and the Commission in its Final Order, i.e., that losses on sales or condemnations of nonregulated or non-rate base assets should be borne by the utility's shareholders. The Commission should avoid Public Counsel's implied invitation to establish a policy requiring ratepayers to bear such losses under such circumstances. Such a policy would be inconsistent with the rationale of the Commission decisions addressing gains on sale of assets, discussed supra, and would provide incentives to utilities to discard systems at losses (to the remaining ratepayers' detriment) rather than capitalizing on economies of scale to make necessary improvements to provide long-term quality service.

11. Public Counsel's second contention on this issue attempts to construct a parallel between an abandonment of rate base property and a condemnation of an entire system with stand-alone rates subject to regulation by St. Johns County (St. Augustine Shores). Apart from the fact that Public Counsel again has inappropriately presented an argument absent from its posthearing brief, the abandonment analogy is specious for the reasons set forth below.

12. First, Public Counsel alleges that the Commission "tagged" the customers with the $11,143 loss on the abandonment of the Salt Springs water system and states that the customers have to pay for the loss.[5] Public Counsel's contention ignores the record

[5]Public Counsel's Motion, at 3.

evidence and the Commission's finding. The Commission accepted Ms. Kimball's unrebutted testimony that the abandonment was extraordinary and, therefore, the loss should be deferred and amortized.[6] Moreover, Public Counsel's statement that the customers will pay for the loss is incorrect. The Final Order clearly states "that the recognition of an extraordinary retirement loss does not increase the revenue requirement in this proceeding."[7] Hence, Public Counsel's initial premise for comparison of an abandonment loss and a condemnation gain is faulty -- the ratepayers in this proceeding shoulder no additional expense as a result of the abandoned Salt Springs plant.

13. Simply put, in an abandonment situation, the Commission focuses on the issue of prudence. If the utility's decision to abandon the plant was prudent, any loss resulting therefrom should be recovered from ratepayers. See, e.g., Mad Hatter Utility, Inc., Order PSC-93-0295-FOF-W issued February 24, 1993. If the utility's decision to abandon the plant is not prudent, any loss therefrom should not be borne by ratepayers. This standard presents an entirely different set of circumstances and factors than those factors arising out of a condemnation of an entire non-Commission regulated system.

14. Public Counsel ignores the numerous distinctions between an abandonment of property and a condemnation of an entire system, specifically:

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[6]Final Order, at 36.

[7]Id., at 37.

a. an abandonment is an ordinary part of doing business -- a condemnation by a governmental authority is not an event ordinarily contemplated by a utility;

b. a utility impacted by an abandonment (even one forced upon a utility by new or revised governmental regulations or some other reason beyond the Company's control) does not relinquish the right to serve customers and the abandonment only becomes extraordinary if the utility does not have sufficient reserves to accommodate the abandonment (Kimball, Tr. 2203-2204) -- condemnations are not part of the normal course of a utility's operations;

c. in an abandonment situation, the customers formerly served by the abandoned plant remain customers of the utility -- when an entire system is condemned, such as St. Augustine Shores, the affected customers no longer are customers of the utility; and

d. since customers remain with the utility in the abandonment situation, the utility's investment can be recovered from them - - when an entire system is condemned, no customers remain from whom the utility can recover any losses of its investment in utility assets.

15. For these reasons, Public Counsel's Motion for Reconsideration of the Commission's decision relating to the gain on the condemnation of the St. Augustine Shores water system should be denied.

C. PROPOSED NEGATIVE ACQUISITION ADJUSTMENT

16. Public Counsel asks the Commission to reconsider its

decision not to impose a negative acquisition adjustment on Southern States' rate base in this proceeding. In attempting to meet its burden of establishing the necessity for reconsideration, Public Counsel sprays a volley of conflicting positions which miss the central point: Public Counsel failed to meet its burden of establishing record evidence supporting a negative acquisition adjustment.

17. Issue 34 in the Prehearing Order[8] states:

> Should negative acquisition adjustment(s) be made to rate base.

Public Counsel raised this issue and bears the burden of establishing that it is appropriate to impose a negative acquisition adjustment. Public Counsel's Motion for Reconsideration acknowledges that discussion of the acquisition adjustment issue is appropriately addressed under Issue 34.[9] Nonetheless, Public Counsel's entire discussion in its posthearing brief under Issue No. 34 is limited to the following:

> Yes. The Commission can not allow a return on investment which was not actually made in providing utility service to customers.[10]

Public Counsel's recognition of the complete lack of evidence supporting a negative acquisition adjustment is self-evident from its posthearing brief. In its Motion for Reconsideration, Public Counsel takes exception to the fact that the Final Order "fails to

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[8]Order No. PSC-92-1265-PHO-WS issued November 4, 1992.

[9]Public Counsel's Motion, at 6.

[10]Public Counsel's posthearing brief, at 17.

even consider the subject of the Deltona high cost debt in conjunction with a negative acquisition adjustment."[11] Public Counsel cannot demand that the Commission consider arguments which are not even offered by Public Counsel in its posthearing brief.

18. Public Counsel's Motion for Reconsideration is essentially a second attempt to persuade the Commission to impose a negative acquisition adjustment by offering argument under Issue No. 40 pertaining to the fixed rate of interest on the Deltona Utilities, Inc. mortgage bonds. The Commission rejected this argument and approach in its Final Order:

> In its brief, OPC argues that it is the failure of the utility to take the high cost of debt into consideration in the negotiation of the purchase price that is really at issue here, not the high cost of debt itself. The utility argues that if the issue is not the cost of debt but the purchase price, then the adjustment would be more appropriately addressed in the acquisition adjustment issue and not in the cost of debt issue. We agree with the utility. We find no evidence in the record to support OPC's position. [Emphasis added.][12]

19. With respect to the cost of the debt for ratemaking purposes, Public Counsel's position fluctuates. In its posthearing brief, under Issue No. 40, Public Counsel states:

> Issue 40: Should the cost of debt capital be adjusted to reflect a reduced interest rate for the 15.95% fixed rate on the Company's $22,500,000 of long-term mortgage bonds?
>
> OPC: Yes. This fixed rate is excessive ... [T]he cost of debt associated with these first

[11]Public Counsel's Motion, at 6.

[12]Final Order, at 50.

> mortgage bonds should be reduced to a level that would have been reasonable had the bonds been refinanced by SSU after the purchase of the Deltona system -- 9.50% to 10.50%.[13]

However, Public Counsel later reverses itself in its posthearing brief, by stating:

> It is important to recognize that it is not specifically the high cost of debt to which the Citizens here object....[14]

The Final Order simply recognizes Public Counsel's concession on this point and goes further to hold that the ratemaking treatment for these bonds has already been decided and is controlled by the First District Court of Appeals' decision in Marco Island Utilities v. Public Service Commission, 566 So.2d 1325 (Fla. 1st DCA 1990).[15]

20. Public Counsel also presents conflicting positions on the issue of whether Topeka Group, Inc. ("Topeka") took the high cost of these bonds into account when it purchased the Deltona Corporation ("Deltona") utilities. In its posthearing brief, Public Counsel alleges that Southern States failed to demonstrate "that the company took this unfavorable cost of debt into consideration in the purchase price when they negotiated this acquisition."[16] However, in its Motion for Reconsideration, Public Counsel acknowledges that "Certainly, the utility took the high cost of this debt into consideration when negotiating the purchase

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[13]Public Counsel's posthearing brief, at 19.

[14]Id.

[15]Final Order, at 50.

[16]Public Counsel's posthearing brief, at 20.

price of the Deltona systems."[17] Public Counsel cannot argue both sides of an issue with the hope of achieving a different result on reconsideration. Public Counsel's positions are inconsistent and ignore the critical facts which are that:

a. Public Counsel failed to meet its burden of establishing the existence of extraordinary circumstances warranting a negative acquisition adjustment.[18]

b. Public Counsel failed to rebut the extensive testimony of Southern States' witnesses addressing the many benefits and improvements now provided to the former Deltona utilities by Southern States, Topeka and Minnesota Power & Light Company.[19] These benefits and improvements are consistent with the Commission's goal of providing incentives to large utilities to acquire distressed utility systems as articulated by the Commission in Order No. 25729, the acquisition adjustment policy order.[20] This evidence also supports the Commission's decision not to impose a negative acquisition adjustment since it would not be appropriate to consider only one factor to the exclusion of all the benefits and improvements enjoyed by customers after the acquisition.

c. Public Counsel's concession that it does not specifically object to the relatively high cost of the debt and its

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[17]Public Counsel's Motion, at 6.

[18]See In re: Investigation of Acquisition Adjustment Policy, 92 FPSC Rep. 2:409 (Order No. 25729, Feb. 17, 1992).

[19]See Vierima, Tr. 969, 1033-1035; Phillips, Tr. 337, 355-357, Ludsen, Tr. 520-523, 534-537; and, Sweat, Tr. 1278-1281.

[20]See 92 FPSC Rep. 2:409, 411-412.

acknowledgement of Mr. Vierima's testimony that Topeka was aware of these bonds, their restrictions and their cost prior to entering into the settlement agreement and exercising the stock warrants to purchase the common stock of the Deltona utilities[21] both undermine any argument of extraordinary circumstances and lend support to the Commission's decision.

d. The Marco Island Utilities decision and its controlling impact on the issue of the cost of the bonds for ratemaking purposes and any potential acquisition adjustment was not challenged by Public Counsel in its Motion for Reconsideration.

e. Public Counsel also failed to establish an evidentiary basis for a specific adjustment to rate base.

21. Finally, Public Counsel's Motion cites the Commission to six hearing exhibits and approximately 53 pages of testimony which dealt "with the issue of the Deltona purchase, the subject of a negative acquisition adjustment, and the Deltona high cost debt."[22] Public Counsel's blanket citations to the record without any explanation as to what testimony or which exhibit contained relevant information overlooked by the Commission fails to meet the specificity requirement for reconsideration under the Stewart Bonded Warehouse decision discussed in paragraph 4 of this Response.

D. UNIFORM STATEWIDE RATES

22. COVA and Citrus County seek reconsideration of the

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[21]See Public Counsel's Motion, at 6-7; Tr. 1024-25.

[22]Public Counsel's Motion, at 6.

Commission's decision to implement uniform statewide rates for Southern States' systems included in this proceeding. The Motions filed by COVA and Citrus County include an assortment of allegations, many of which are repetitive, unsubstantiated by record evidence, based on facts outside the record, or inappropriately raised for the first time in the Motions for Reconsideration. Despite the length of these motions, and the various and sundry arguments contained therein,[23] both parties failed to point the Commission to evidence it allegedly overlooked in reaching its decision. Simply put, COVA and Citrus County disagree with the Commission's decision and have inappropriately chosen to use their Motions for Reconsideration to express their disagreement with the evidence relied on by the Commission in its Final Order.

23. COVA and Citrus County first maintain that they were denied legally required notice and opportunity to be heard on the issue of uniform statewide rates.[24] This is a false, specious contention for a number of reasons, specifically:

a. Issue No. 92 in the Prehearing Order states: "Should SSU's final rates be uniform within counties, regions or statewide." [Emphasis supplied.]

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[23]The Motions discuss a number of irrelevant and unsubstantiated topics such as statements allegedly made by Southern States and the Commission to newspapers, Staff's alleged desire to reduce their workload, the clients represented by the law firm employing Mr. Cresse, and COVA's participation in other Commission proceedings. These topics should be disregarded by the Commission.

[24]COVA's Motion, at 1-2; Citrus County's Motion, at 1-4.

b. The Prehearing Order reflects COVA's position in favor of establishing rates on a stand-alone basis and against combining systems for rate design purposes. COVA clearly had notice of this issue and took a position on the issue prior to hearing.

c. The Prehearing Order does not contain any positions of Citrus County since Citrus County failed to file a prehearing statement and did not attend the prehearing conference. Citrus County may not use its lack of due diligence to support a claim of inadequate notice.

d. Both parties' opportunity to be heard was exercised during the hearing and through post-hearing briefs. COVA presented the direct testimony of Mr. Jones in support of COVA's position opposing uniform rates. (Tr. 1747). COVA also cross-examined Southern States' witness Mr. Cresse (Tr. 1058-1060) on the issue of statewide uniform rates. Similarly, Citrus County, who sponsored no witnesses in the proceeding, cross-examined Mr. Cresse (Tr. 1068-1109) and Staff witness Mr. Williams (Tr. 1068-1109) on issues relevant to the implementation of uniform statewide rates. Indeed, Citrus County's claim of lack of notice becomes even less credible in light of the fact that during the hearing (and in its posthearing brief), Citrus County raised a new issue regarding the Commission's statutory authority to implement uniform statewide rates.

e. Finally, both COVA and Citrus County addressed the issue of uniform statewide rates in their posthearing briefs. Notably, neither party raised the issue of notice and opportunity to be heard in its posthearing brief.

24. The parties' attempt to lend credibility to their notice argument by reference to the minimum filing requirements ("MFRs") and customer notices provided by Southern States also fails. The MFRs were accepted by the Commission's designee on June 17, 1992. The MFRs did not request uniform rates. This is irrelevant. The issue of rate design is no different than an issue involving rate base or expenses properly noticed and disputed by a party or Staff in a rate case proceeding conducted pursuant to Section 120.57(1), Florida Statutes. Clearly, there were other proposals reflected in the MFRs which were rejected by the Commission (i.e., margin reserve calculations) as a result of the hearing process. The argument alleging inadequate notice in the MFRs is without merit. Likewise, with respect to the customer notices, no party challenged the sufficiency of these notices either during the hearing or following the hearing in posthearing briefs. The notices were approved by Staff and complied with Commission Rule 25-22.0406(5), F.A.C. The contents of the customer notices were not at issue in the case and provide no basis for reconsideration of the Commission's decision to implement uniform statewide rates.

25. COVA and Citrus County add a final new argument to the notice issue. The parties contend that uniform statewide rates must first be considered through rulemaking before implementing them in this proceeding. This is an incorrect statement of the law. Apart from procedural rules, rulemaking is appropriate only to policy issues which have an industry-wide impact. Section 120.52(16), Florida Statutes; Southern Bell Telephone & Telegraph

Company v. Florida Public Service Commission, 443 So.2d 92, 96-97 (Fla. 1983). It is questionable whether the issue of statewide uniform rates is an industry-wide issue or an issue appropriate only to specific multiple systems utilities. However, assuming arguendo that the issue is appropriate for rulemaking,[25] the Florida Supreme Court has held that "the Commission is not required to institute a rulemaking proceeding every time a new policy is developed." Southern Bell Telephone and Telegraph Company, supra.[26]

COVA also contends that Order Nos. 21202, 21631[27] and 24715[28] presented criteria for uniform statewide rates which have been violated by the Final Order. Again, COVA misses the mark. Order Nos. 21631 and 24715 did not address criteria for uniform rates; however, Order No. 21202 did -- and indeed, the factors pertinent

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[25]As the Commission did in Order No. 21202 issued May 8, 1989, 89 FPSC 5:174, 186.

[26]Citrus County and COVA attempt to fabricate an existing Commission "policy" against statewide rates. As explained in this Response, the Commission never has established such a policy. In fact, the Commission has established a policy supporting uniform statewide rates by virtue of approving uniform cross-county rates for water and wastewater utilities. See 90 FPSC Rep. 4:156 (Order No. 22794 issued April 10, 1990); 90 FPSC Rep. 6:386 (Order No. 23111 issued June 25, 1990); and 90 FPSC Rep. 12:56 (Order No. 23834 issued December 4, 1990), all pertaining to Jacksonville Suburban Utilities Corporation.

[27]89 FPSC Rep. 7:616 (Order No. 21631, Aug. 2, 1989).

[28]91 FPSC Rep. 6:509 (Order No. 24715, June 26, 1991).

to uniform statewide rates[29] outlined in that limited investigation proceeding are included and found applicable to Southern States in the Final Order.

26. Hence, the record establishes that COVA and Citrus County had notice of the issue of uniform statewide rates and exercised their opportunity to submit or solicit evidence and argue the issue in posthearing briefs. The claims of violation of constitutional, statutory and rule due process and notice requirements are substantially without merit and, appearing for the first time in the Motions for Reconsideration, have been waived pursuant to Commission precedent (Order No. PSC-92-0132-FOF-TL, supra).

27. Relying on Order No. 21631 (a utility transfer proceeding) and Order No. 21202 (a limited investigation proceeding), COVA next claims that the implementation of uniform statewide rates in this docket violates the doctrine of administrative res judicata.[30] This new argument also is without merit. As the Commission recently reiterated in Order No. PSC-93-0186-PCO-WS issued February 8, 1993, at 4-5.

> In Order No. 20066, issued September 26, 1988, In re Application of Miles Grant Water and Sewer Company for an Increase in Water and Sewer Rates in Martin County, this Commission recognized that collateral estoppel is not appropriate in rate proceedings because the Commission should exercise its sound

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[29]Order No. 21202 states: "Cost savings due to a reduction in accounting, data processing and rate case expense can be passed on to ratepayers. Cross-subsidization can be minimized if the rates are established that recognize, for example, the differences in types of treatment and facilities." See 89 FPSC 5:174 at 186.

[30]COVA's Motion, at 2-3.

> discretion to adjust a utility's rate base. The Commission's decision in the Miles Grant case was affirmed by the 1st District Court of Appeals. Miles Grant Water and Sewer Company v. Florida Public Service Commission, 545 So.2d 871 (Fla. 1st DCA 1989), aff'd per curiam.

Again, COVA's new argument is inappropriate for a motion for reconsideration and is legally flawed.

28. Turning to the basis for the Commission's decision, the Commission relied on competent and substantial evidence provided by Mr. Cresse and Mr. Williams which justified the implementation of uniform statewide rates. Final Order, at 93-94. The testimony of these witnesses support the Commission's conclusion "that uniform, statewide rates provide the following advantages: 1) administrative efficiencies in accounting, operations and maintenance; 2) rate stability; 3) insulation of customers from rate shock of major capital improvements; 4) recognition of economies of scale; 5) ease of implementation; and 6) lower rate case expense in the long run."[31]

29. COVA and Citrus County simply use their Motions for Reconsideration to express their disagreement with the Commission's rationale and basis for ordering uniform statewide rates.

30. For example, COVA correctly presumes that the Commission's decision will encourage Southern States to acquire small, troubled utilities. However, COVA contends that this Commission policy has not been adopted through proper proceedings

[31]Final Order, at 95.

and is arbitrary and capricious.[32] COVA's argument ignores the Commission's proceeding in Docket No. 891309-WS resulting in Order No. 25729 issued February 17, 1992 which centered on and confirmed the Commission's acquisition adjustment policy and set forth the benefits arising out of the Commission's adjustment policy which provides incentives for acquisitions of small, distressed utilities.[33]

31. COVA also misleads by stating that the Commission found "that no customers would be harmed by the imposition of uniform rates."[34] The Commission made no such finding. The Final Order contains a thorough discussion of the analysis performed by the Commission in comparing uniform statewide rates to stand-alone rates and the rate design proposed by Southern States. Based on the record evidence, the relative disparities between uniform statewide rates and rates under other alternatives, and a weighing of "the benefits of statewide rates to all customers against any inequities created by these rates,"[35] the Commission appropriately exercised its discretion and authority to implement the uniform statewide rates.

32. Both COVA and Citrus County essentially argue that they are legally entitled to stand-alone rates on a pure cost of service basis. This argument ignores Commission and judicial precedents.

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[32]COVA's Motion, at 5.

[33]See 92 FPSC 2:409 at 411-412.

[34]COVA's Motion, at 4.

[35]Final Order, at 95. [Emphasis added.]

The Commission is not required to establish rates on a pure, stand-alone cost of service basis. Occidental Chemical Company, supra, at 340. The Commission addresses this issue in the Final Order citing Mr. Cresse's testimony that: (a) the Commission has established uniform rates in other industries without regard to geographical area or type of treatment; and (b) that there is no such thing as 100% parity for each class of customers receiving service from a utility for every service customers receive, and that these types of decisions are made regularly by this Commission with regard to all of the utilities it regulates.[36] Moreover, as referenced in the Final Order,[37] the Commission on numerous occasions has implemented county-wide uniform rates for water and wastewater utilities despite the fact that systems within the county are not interconnected. Although COVA and Citrus County apparently presume that the length of the distance between systems has some overriding significance for cost of service purposes, that presumption is not supported by the record.[38]

33. Indeed, both COVA and Citrus County ignore the benefits of the economies of scale provided by Southern States and enhanced through uniform statewide rates. COVA and Citrus County neglect to mention how they benefit from the confirmed savings achieved

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[36]Final Order, at 94.

[37]Id.

[38]It is questionable whether the customers served by 9 other systems in Citrus County whose rates are now lower than they would be on a stand-alone basis share the concerns expressed by Citrus County.

through Southern States' allocation to such parties of only a small portion of the costs of the extensive A&G services provided by Southern States. Further, these parties ignore the magnitude of the impact on rates that would arise if for example, COVA were provided the extensive array of administrative and general services provided by Southern States (most likely from third party contractors) without the economies achieved by consolidating these services and allocating the costs among the other approximately 95,000 customers affected by this proceeding.

34. COVA attempts to inflate the level of subsidy which allegedly results from the statewide rates but fails to acknowledge that Sugarmill Woods customers, unlike the vast majority of the Company's residential customers, are served by one-inch meters and consume an amount of water each month which is more than fifty percent (50%) greater than the average monthly consumption of the Company's customers. Of course, these two facts have a material impact on the bills of our Sugarmill Woods customers.

35. Citrus County also uses its Motion to debate the testimony of Mr. Williams "that imposing uniform statewide rates in this case would put the water and sewer utility on par with telephone and electric utilities."[39] Citrus County points to the fact that water and wastewater utilities are not fully interconnected.[40]This point has not previously proven to be a

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[39]Citrus County's Motion, at 5.

[40]The Commission need only check its official maps of the local exchange companies to verify that some of these companies serve territories which are not geographically contiguous.

deterrent to the establishment of uniform county-wide rates and uniform cross-county rates.[41] Citrus County offers no explanation in its posthearing brief nor in its Motion for Reconsideration as to why the lack of interconnection should prevent the establishment of uniform county-wide or statewide rates. Citrus County also argues that telephone companies have separate and distinct rates for customer classes -- so do water and wastewater utilities such as Southern States. Citrus County fails to point the Commission to any oversight of record evidence or legal error in this regard. Citrus County's belated attempt to debate the merits of this comparison is not appropriate for reconsideration.

36. The repeated allegations of Citrus County and COVA concerning the presumed lack of a "common thread" between Southern States' systems is false. The "common thread" between the systems is much broader than the parochial interests of any individual system -- that is, the sharing of Florida's precious water supplies. In fact, it could be said that Florida's acquifers, the source of the vast majority of the Company's water systems, do in fact result in the statewide "interconnection" of the Company's systems. In the absence of these acquifers, which are being depleted at an alarming rate, the Company and utilities statewide indeed may be required to install pipelines to interconnect the remaining supplies. This eventually is confirmed by the existence of entities such as the West Coast Regional Water Supply Authority

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[41] See Final Order, at 94 and Commission orders cited in footnote 26 of this Response.

which must invest considerable funds to transport available raw water supplies over long distances.

The State's interests in assuring the proper treatment of wastewater effluent and encouraging the shift to effluent reuse to conserve potable water supplies and recharge the State's acquifers is yet another "common thread" between the Company's systems which must not be ignored.

A further "common thread" between the Company's systems is the applicability statewide of DER rules and regulations which impose strict water standards and often have required significant capital investments throughout our systems. As confirmed in the Commission's order, one of the principal benefits of statewide rates is the ability to spread the costs associated with these rules and regulations over a customer base of more than 100,000 -- thus limiting the rate shock which the Company's MFRs demonstrate would otherwise undeniably result if statewide rates are not provided.

37. It also should be pointed out that whereas electric customers served by the same utility do share production and transmission facilities, each locality is served by its own local distribution system which is specifically designed to serve the locality's needs and which <u>is not</u> interconnected by distribution facilities to a different distribution system in another locality. For example, Florida Power & Light's ("FP&L") distribution system serving the City of Hollywood <u>is not</u> designed to provide and does not provide electric service to rural areas in its service

territory on the west coast of Florida such as the Arcadia area.[42] Logically, the costs per customer associated with a distribution system serving a large rural area would be higher than the per customer cost of a city's distribution system. However, the traditional treatment of the costs of all of an electric utility's distribution systems is to roll these costs together and have all customers, wherever situated in the State, share in these costs. These facts refute the attempt by Citrus County to portray water systems as totally distinct from electric systems.

38. Finally, COVA and Citrus County rehash legal arguments rejected by the Commission in its Final Order. Both parties argue that the uniform statewide rates impose an illegal tax. This argument was considered and rejected in the Final Order.[43] The parties also argue that the Commission lacks statutory authority to impose uniform statewide rates.[44] This argument was also considered and rejected by the Commission in the Final Order.[45] The decisions cited by COVA in paragraph 2 of its Motion set forth the well-established principle that an agency's interpretation of its statutes are entitled to great weight. These decisions support

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[42]FP&L has uniform statewide rates including one uniform statewide residential rate.

[43]Final Order, at 94-95.

[44]In addition, COVA raises a new legal argument based on alleged impairment of contract rights acquired through sales contracts and disclosure statements. This argument is spurious. There is no authority for the proposition that a rate increase impairs such contract rights.

[45]See Final Order, at 94-95.

the Commission's application of pertinent provisions of Chapter 367, Florida Statutes, and its determination that it has statutory authority to establish the uniform statewide rates.[46]

E. PROPERTY TAXES AND NON-USED AND USEFUL PROPERTY

39. COVA also refers to the Commission's calculation of and adjustment for property tax expense attributable to non-used and useful property. It is not clear whether COVA is requesting reconsideration on this issue. Howver, as with COVA's other arguments, COVA's allegations either are unsubstantiated in the record or are outweighed by record evidence of Company witness Ms. Judith J. Kimball. Ms. Kimball confirmed Southern States' extensive and partially successful efforts to convince the Citrus County Property Appraiser to reduce the Company's tax assessment. (Tr. 1763-66) COVA's hearsay evidence and speculation pales in comparison to Ms. Kimball's sworn testimony.

F. CONCLUSION

40. The Intervenors' Motions for Reconsideration fail to establish any basis for reconsideration under the standards established by the Supreme Court of Florida and precedents of this Commission. For the reasons stated herein, the Motions for reconsideration filed by Public Counsel, COVA and Citrus County should be denied.

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[46] Id., at 93.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Southern States' Response to Motions for Reconsideration Filed By Public Counsel, Cova and Citrus County was furnished by U. S. Mail, this 14th day of April, 1993, to the following:

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