

FLORIDA PUBLIC SERVICE COMMISSION

Fletcher Building
101 East Gaines Street
Tallahassee, Florida 32399-0863

M E M O R A N D U M

May 6, 1993

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING

FROM: DIVISION OF LEGAL SERVICES (SUMMERLIN) *SS*
DIVISION OF WATER AND WASTEWATER (WILLIS) *mwj*

RE: UTILITY: SOUTHERN STATES UTILITIES, INC.
DOCKET NO: 920199-WS
COUNTY: CHARLOTTE/LEE, CITRUS, CLAY, DUVAL, HIGHLANDS,
LAKE, MARION, MARTIN, NASSAU, ORANGE, OSCEOLA,
PASCO, PUTNAM, SEMINOLE, VOLUSIA, WASHINGTON,
COLLIER, HERNANDO
CASE: APPLICATION FOR RATE INCREASE

AGENDA: MAY 18, 1993 - CONTROVERSIAL - PARTIES MAY NOT
PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: I:\PSC\LEG\WP\920199.RCM

CASE BACKGROUND

On March 22, 1993, the Commission issued a Final Order Setting Rates, Order No. PSC-93-0423-FOF-WS, in this Docket. Several Motions for Reconsideration have been filed subsequently. On April 6, 1993, Southern States Utilities, Inc., filed a Motion for Stay of Order No. PSC-93-0423-FOF-WS. This recommendation addresses Southern States' Motion for Stay.

DOCUMENT NUMBER-DATE

04972 MAY-68

FPSC-RECORDS/REPORTING 001228

DISCUSSION OF ISSUES

ISSUE 1: Should Southern States Utilities, Inc.'s Motion for Stay of Order No. PSC-93-0423-FOF-WS be granted?

RECOMMENDATION: Yes, Southern States' Motion for Stay should be granted. (Summerlin, Willis)

STAFF ANALYSIS: On April 6, 1992, Southern States Utilities, Inc. (SSU) filed a Motion for Stay of Order No. PSC-93-0423-FOF-WS. Order No. PSC-93-0423-FOF-WS provides for a refund of excess interim rates, with interest. Rule 25-22.060(c), Florida Administrative Code, states that a motion for reconsideration of an order does not serve to automatically stay the effectiveness of such order. Accordingly, SSU has filed its Motion for Stay. SSU asserts that it

would be senseless to require the temporary distribution of a refund pending reconsideration when the Commission is fully aware that the utility is entitled to an automatic stay and retention of the revenues should it seek judicial review.

SSU's assertion above is based on the provisions of Rule 25-22.061 stating that a utility may have an automatic stay if it requests one in the event it files an appeal of an Order requiring a refund to customers or a decrease in rates charged to customers. SSU also argues that Rule 25-30.360(2), Florida Administrative Code, indicates that stays may be granted for orders requiring refunds pending disposition of motions for reconsideration.

SSU is clearly not entitled to an automatic stay since there has been no appeal of this Order as yet, although in a footnote SSU alludes to a case that it believes demonstrates that the Commission has in the past applied the provisions of Rule 25-22.061 regarding stays pending judicial review to stays pending motions for reconsideration. However, Staff recommends that a stay of Order No. PSC-93-0423-FOF-WS would be appropriate pending the disposition of the several motions for reconsideration in this matter. Staff believes it would be wasteful to require a refund of monies prior to the Commission disposing of all of the pending motions for reconsideration, some of which, if granted, might affect the amount of such refund. In addition, the customers of the utility are

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protected during the pendency of the disposition of these motions for reconsideration as Rule 25-30.360(4) provides that interest continues to accrue until the refunds are made. Therefore, Staff recommends that the Commission grant SSU's Motion for Stay of Order No. PSC-93-0423-FOF-WS pending the disposition of all motions for reconsideration.

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