FLORIDA PUBLIC SERVICE COMMISSION

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M E M O R A N D U M

June 24, 1993

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING

FROM: DIVISION OF WATER AND WASTEWATER (WILLIS, MERCHANT, MESSER)
DIVISION OF LEGAL SERVICES (BEDELL)
DIVISION OF AUDITING AND FINANCE (LE

RE: UTILITY: SOUTHERN STATES UTILITIES, INC. AND DELTONA UTILITIES, INC.

DOCKET NO: 920199-WS
COUNTIES: BREVARD, CHARLOTTE/LEE, CITRUS, CLAY, COLLIER, DUVAL, HIGHLANDS, LAKE, MARION, MARTIN, NASSAU, ORANGE, OSCEOLA, PASCO, PUTNAM, SEMINOLE, VOLUSIA, AND WASHINGTON

CASE: APPLICATION FOR A RATE INCREASE

AGENDA: JULY 6, 1993 - CONTROVERSIAL - PARTIES MAY NOT PARTICIPATE

CRITICAL DATES: NONE

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

CASE BACKGROUND

Southern States Utilities, Inc., and Deltona Utilities, Inc. (hereinafter referred to as the utility or SSU) are collectively a class A water and wastewater utility operating in various counties in the State of Florida. SSU has filed an application to increase the rates and charges for 127 of its water and wastewater systems regulated by this Commission. According to the information contained in the minimum filing requirements (MFRs), the total annual revenue for the water systems filed in this application for 1991 was $12,319,321 and the net operating income was $1,616,165. The total annual revenue for the wastewater systems filed in this application for 1991 was $6,669,468 and the net operating income was $324,177. For the systems involved in this rate application, the utility serves a total of 75,055 water customers and 25,966 wastewater customers.

The utility's last rate case for 34 of its water and wastewater systems was in Docket No. 900329-WS. That case was dismissed by the Commission in Order No. 24715, issued June 26, 1991. The First District Court of Appeal affirmed this Commission's action on July 16, 1992.

On May 11, 1992, the utility filed its request for increased rates and charges. The MFRs were deficient. On June 17, 1992, the utility submitted the required information, and the official date of filing was established as June 17, 1992.

In total, the utility requested interim rates designed to generate annual revenues of $16,806,594 for its water systems and $10,270,606 for its wastewater systems, increases of $3,981,192 (31.57%) and $2,997,359 (41.22%), respectively, according to the MFRs. The utility requested final rates designed to generate annual revenues of $17,998,776 for its water systems and $10,872,112 for its wastewater systems, increases of $5,064,353 (40.16%) and $3,601,165 (49.53%), respectively, according to the MFRs. The approved test year for determining both interim and final rates is the historical year ended December 31, 1991.

By Order No. PSC-92-0832-FOF-WS, issued August 27, 1992, the Commission suspended SSU's requested rates. The utility waived the 60-day statutory period for interim rates until August 18, 1992. On that date, interim rates were authorized. By Order No. PSC-92-0948-FOF-WS, issued September 8, 1992, and as amended by Order No.

PSC-92-0948A-FOF-WS, issued October 13, 1992, interim rates designed to generate annual water and wastewater systems revenues of $16,347,596 and $10,270,606, respectively, were approved.

Between August 1992 and November 1992 the Commission held ten customer service hearings throughout the state for the purpose of receiving customer testimony for this case. Beginning November 6, 1992, a five day hearing was held in Tallahassee.

By Order No. PSC-93-0423-FOF-WS, issued on March 22, 1993, the Commission approved an increase in the utility's rates and charges which set rates based on a uniform statewide rate structure. On April 6, 1993, SSU, OPC, Citrus County, Citrus and Oak Village Association (COVA) timely filed Motions for Reconsideration of Order No. PSC-93-0423-FOF-WS (Final Order). Also on that day, Sugarmill Manor filed a Petition for Intervention and Reconsideration of the Final Order. On April 13, 1993, OPC filed a Response to SSU's motion for reconsideration and SSU filed a Response to Sugarmill Manor's Petition for Intervention and Reconsideration. On April 14, 1993, SSU filed a Response to OPC's, COVA's, and Citrus County's Motions for Reconsideration. The numerous petitions and letters seeking intervention and/or reconsideration which have been filed by others are addressed in Issue 1.

ISSUE 1: Should the motions for intervention and reconsideration filed after the period for filing reconsideration be granted?

RECOMMENDATION: No. (Bedell, Sager)

STAFF ANALYSIS: After the hearing and the time for filing for reconsideration, the following companies or individuals have requested either intervention in Docket No. 920199-WS, reconsideration of Order No. PSC-93-0423-FOF-WS, or both:

1. Sugarmill Manor, Inc. filed a petition for intervention in Docket No. 920199-WS and reconsideration of Order No. PSC-93-0423-FOF-WS on April 14, 1993. Sugarmill Manor is an adult congregate living facility operating in Homosassa, Florida. In paragraph two of its petition, Sugarmill Manor states that in order to expand its facilities to its present size, Sugarmill Manor paid significant amounts of Contributions-in-Aid-of-Construction (CIAC) to extend service to it. In paragraph three, Sugarmill Manor states that statewide

uniform rates will result in a 68.2 percent increase or $2,814.46 which will present a hardship to its residents. In paragraph four, Sugarmill Manor says that it did not receive notice that SSU was seeking or that the PSC was considering statewide uniform rates. Finally, Sugarmill Manor states that the adoption of uniform rates is unfair, unjust and discriminatory.

2. By letter dated April 1 and received April 7, 1993, Volusia County Council Member Richard McCoy requested reconsideration of Order No. PSC-93-0423-FOF-WS. In his letter to Chairman Terry Deason, Council Member McCoy states that the rates approved by the PSC are unfair since they apply without regard to the wide variations in costs between multiple water systems. Mr. McCoy also states that there will be a 100% increase in the residential base rate. Mr. McCoy added that the "cost of SSU's expansion are being fully amortized by the developers." Mr. McCoy further states that he along with others "properly assumed that the buyers had demanded and received a discount from the original owner." Thus, Mr. McCoy says that "the company is not entitled to any compensation for any action it took to comply with the State's order." In his last paragraph, Mr. McCoy also asserts that, contrary to promises made to Volusia County, SSU has failed to operate the Deltona Systems at the lowest possible cost. In his April 16, 1993 letter to Chairman Deason, Volusia County Council Member at-Large Phil Giorno basically reiterated the position taken by Mr. McCoy. In another letter, received May 21, 1993, Volusia County Council Member Patricia Northey expressed her support of fellow Council Member Richard McCoy's petition for reconsideration of the rate increase granted to SSU. Ms. Northey also asked that the PSC reconsider the rate increase as it pertains to the Deltona community.

3. Hernando County Board of Commissioners' Resolution No. 93-62, dated May 17, 1993 and received May 20, 1993, requests that the PSC reconsider its position in Order No. PSC-93-0423-FOF-WS because the "imposition of statewide rates on Southern States Utilities' customers was in derogation of PSC previous pronouncements on the concept and criteria for statewide rate structuring possibilities; that there was a failure to put customers on notice of ...radial [sic] departure in regulatory

policy; and that PSC is subject to the provisions of Chapter 120, Florida Statutes, the Administrative Procedure Act...and the protection of the due process rights of persons with substantial interests appearing before an agency." Thus, Resolution No. 93-62 of Hernando County states the PSC "knowingly deprived Southern States Utilities' customers and other parties to the proceeding the minimum essentials of due process of law guaranteed by the United States and State of Florida Constitutions when PSC ordered statewide uniform rates to Southern States Utilities."

4. Florida State Senator Ginny Brown-Waite's petition for intervention in Docket No. 920199-WS and for reconsideration of Order No. PSC-93-0423-FOF-WS was filed on May 26, 1993. In her petition, Senator Brown-Waite states that she represents herself together with her fellow SSU customers. Senator Brown-Waite further states that "statewide uniform water and sewer rates will result in unconscionable annual cost increase to Spring Hill residents." Senator Brown-Waite states that the PSC denied her and other customers their procedural due process rights to notice since the PSC failed to give notice by bill inserts or separate mailing that either Southern States Utilities was seeking or that the PSC was considering statewide uniform rates. Therefore, according to Senator Brown-Waite, the uniform rates are both unfair and illegal since the imposition of the rates exceeded the authority of Chapter 350, Florida Statutes, by the PSC's adoption of the rates without the legislature's approval.

5. On May 28, 1993, Spring Hill Civic Association, Inc., filed a petition for intervention in Docket No. 920199-WS and for reconsideration of Order No. PSC-93-0423-FOF-WS. Spring Hill, in its petition, states that uniform rates will result in a 36.6 percent increase. Spring Hill also states that neither Spring Hill Civic Association nor Spring Hill's residents received notice by bill inserts or separate mailing that SSU or the PSC was considering statewide uniform rates. Spring Hill also states that adoption of the uniform rates is unfair, unjust and discriminatory as to Spring Hill residents.

6. On June 10, 1993, Cypress Village Property Owners Association (Cypress Village) filed a petition for

intervention in Docket No. 920199-WS and reconsideration of Order No. PSC-93-0423-FOF-WS. Cypress Village is a non-profit organization representing members who are residents and property owners of Cypress Village in Citrus County, Florida. Cypress Village states that statewide, uniform rates will result in a 69 percent increase and that neither Cypress Village nor Cypress Village's residents received notice by bill inserts or separate mailing that SSU was seeking or that the PSC was considering statewide uniform rates. Finally, Cypress Village states that the adoption of statewide uniform rates is unfair, unjust and discriminatory as to Cypress Village residents.

In response to these petitions, SSU states that, pursuant to Rules 25-22.037, 25-22.039 and 25-22.056, Florida Administrative Code, the petitions are untimely and should be denied.

Staff agrees. First, in regard to intervention, Rule 25-22.039, Florida Administrative Code, provides that a petition to intervene must be filed at least five days before final hearing. Sugarmill Manor, Inc., Senator Brown-Waite, Spring Hill Civic Association, Inc., Cypress Village Property Owners Association, Hernando County Board of County Commissioners, and Volusia County Council Members Phil Giorno, Richard McCoy and Patricia Northey filed their petitions for intervention five months or more after the final hearing. Pursuant to Rule 25-22.039, the petitions were not timely. Therefore, staff recommends that petitioners' requests for intervention should be denied.

On the issue of the petitions for reconsideration, staff believes that the applicable rules do not afford non-parties leave to file post-hearing pleadings. Further, even if Sugarmill Manor, Inc. were given party status, the petitions for reconsideration were not filed within the 15 day period required by Rule 25-22.060(3)(a), Florida Administrative Code. Therefore, staff recommends that the petitions for reconsideration filed by the above-referenced individuals be denied as untimely.

In recommending that these petitions be denied, staff notes that all of the issues raised by the petitioners have been addressed in the body of this recommendation as they have been raised by parties that did timely file petition for reconsideration. The issues relating to notice, PSC jurisdiction and fairness of uniform rates are addressed in Issue 2.

On April 2, 1993, OPC filed a Motion for Waiver of Rule 25-22.060(3)(a), Florida Administrative Code, requesting additional time to file its motion for reconsideration. On April 5, 1993, SSU filed a response in opposition to OPC's motion. However, OPC subsequently timely filed its motion for reconsideration on April 6, 1993. Therefore, staff recommends that OPC's motion for waiver of Rule 25-22.060.(3)(a) is now moot.

ISSUE 2: Should the Motions for Reconsideration filed by Citrus County and COVA regarding uniform, statewide rates be granted?

RECOMMENDATION: No. (Bedell)

STAFF ANALYSIS: As discussed in the case background, both COVA and Citrus County filed timely motions for reconsideration. Both motions request reconsideration of the uniform, statewide rates established in Order No. PSC-93-0423-FOF-WS, and raise many of the same points. Therefore, for purposes of this Recommendation the arguments of the two motions have been combined.

The standard for determining whether reconsideration is appropriate is set forth in Diamond Cab Company of Miami v. King, 146 So.2d 089 (Fla. 1962). In Diamond Cab, the Court held that the purpose for a petition for reconsideration is to bring to an Agency's attention a point which was overlooked or which the agency failed to consider when it rendered its order. In Stewart Bonded Warehouses v. Bevis, 294 So.2d 315 (Fla. 1974), the Court held that a petition for reconsideration should be based upon specific factual matters set forth in the record and susceptible to review. Staff has relied on the standard set forth in the above-referenced cases in preparing this recommendation.

NOTICE

As the first point on reconsideration, COVA and Citrus County argue that the customers of SSU were deprived of due process in this proceeding because they did not receive fair or adequate notice that uniform statewide rates would be considered. Citrus County argues that failure to provide adequate notice violates the provisions of Chapter 120, Florida Statutes, which contemplate reasonable notice and an opportunity to be heard. As further basis for reconsideration, both COVA and Citrus County allege that the utility did not request uniform rates, therefore the customers were

not given notice of uniform rates from the utility's filing for rate relief. In addition, Citrus County alleges that the PSC customer service hearings did not alert customers of the possibility of uniform rates. Both parties allege that information in the PSC press release was misleading. They further argue that no party to this case, other than PSC staff, advocated uniform rates and that staff did not give notice that it would advocate uniform rates at the hearing. In addition, COVA argues that it received the recommendation with rate schedules showing the impact of uniform rates only after the hearing was complete and briefs had been filed.

In its response to these arguments, SSU argues that Issue 92 of the Prehearing Order puts the parties on notice that statewide rates would be considered; that COVA took a position in favor of stand-alone rates in the Prehearing Order; that Citrus County failed to participate in the Prehearing conference; that COVA presented direct testimony in opposition to uniform rates; that both parties cross-examined witnesses on the issue of statewide rates; that during the hearing, Citrus County raised for the first time, the issue of the Commission's authority to implement uniform rates; and that the issue of statewide rates was addressed in both parties' posthearing briefs. SSU further argues that it is irrelevant that the utility did not request uniform rates in the MFRs because rate design is at issue in a rate proceeding, just as rate base or expenses are. In addition, SSU states that the customer notices complied with Commission rules and were not at issue at the hearing or in the parties' briefs.

Staff believes that COVA's and Citrus County's motions for reconsideration regarding lack of adequate notice should be denied. Staff believes adequate notice was provided to all parties. The MFRs and the notice to customers contained schedules which indicated that the utility was requesting a change in rate design by requesting a rate structure with a maximum bill for customers at a 10,000 gallon level of consumption. This request was a departure from the previously approved rate structure. This request also contained the element of sharing costs between systems.

In response to Citrus County's allegation that the customer hearings failed to alert the customers to the possibility of uniform statewide rates, it is important to note that the primary purpose of the customer hearings is to determine the quality of service provided by a utility and to hear other testimony of customers. The record of the ten customer hearings held in this docket contains testimony of numerous customers concerned that the

rate increase requested by the utility was too high. This compelling concern of the customers was reflected on page 95 of the Order where the Commission weighed the impact of stand-alone rates against uniform, statewide rates and determined that, "the wide disparity of rates calculated on a stand alone basis, coupled with the ... benefits of uniform, statewide rates, outweighs the benefits of the traditional approach of setting rates on a stand-alone basis." Thus, it was the concerns raised by customers at the customer hearings that was part of the driving force behind the Commission's decision to approve uniform, statewide rates.

In the City of Plant City v. Mayo, 337 So.2d 966 (Fla. 1976), the Florida Supreme Court addressed the issue of adequate notice and found as follows:

> While we are inclined to view the notice given to customers in this case as inadequate for actual notice of the precise adjustment made, we must agree with the Commission that more precision is probably not possible and in any event not required. To do so would either confine the Commission unreasonably in approving rate changes, or require a pre-hearing proceeding to tailor the notice to the matters which would later be developed. We conclude, therefore, that the Commission's standard form of notice for rate hearings imparts sufficient information for interested persons to avail themselves of participation.
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> Id. at 971

Staff believes that in this case, as in all rate case proceedings, rate structure or rate design is and always has been an open issue. Staff believes that the customer notices were sufficient for interested parties to avail themselves of participation.

Press releases are not designed to inform the public of all possible outcomes of a proceeding. Press releases are not part of the Chapter 120, Florida Statutes, process and do not serve as formal notice of agency proceedings. Although COVA's witness testified that COVA intended to show that the newspapers were provided inaccurate information concerning the rate increase, no evidence was presented on this matter.

Further, in the Section 120.57, Florida Statutes, hearing process, the issue of statewide rates was clearly put before the public in Order No. PSC-92-1265-PHO-WS, issued November 4, 1992, the Prehearing Order in this Docket. Issue 92 of that Order states: "Should SSU's final rates be uniform within counties, regions, or statewide?" COVA took the following position:

> COVA firmly believes that the best way to establish rates is on a stand-alone basis. It is not realistic to combine all systems regardless of their historical evolvement. Even SSU states that CIAC is only relevant to Sugar Mill Woods and Burnt Store, both part of the Twin County Utilities Acquisition. Yet all prepaid CIAC is lumped into one account penalizing all those SMW customers who have invested and are still investing more than $2000 each in their utility.
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> Order No. PSC-92-1265-PHO-WS, p. 60

COVA presented no witness on this issue. SSU took the following position:

> If uniform rates are to be established, the benefits of such a rate structure could best be achieved only on a statewide basis. Neither County geographical boundaries nor the utility's own "regional" boundaries would recognize the factors previously identified as being critical to a proper uniform rate structure. The statewide rates could be developed using one of three proposed methods: (1) a method similar to the "rate caps" proposed by the utility in this proceeding; (2) cost of service and other pertinent factors would be considered together; and (3) the utility's preferred method, a statewide rate for standard and advanced treatment processes.

Utility witness Ludsen was listed as a witness for this issue yet Citrus County never asked a question of him on this issue during cross-examination. Staff took no position on this issue pending development of the record. However, it should be noted that Issue 92 was an issue raised by staff in its Prehearing Statement. Further, staff offered the expert testimony of John Williams who

provided his opinion on this issue. Citrus County did not intervene in this proceeding prior to the due date of Prehearing Statements; it took no position at the Prehearing Conference; and it provided the Commission with no expert testimony on this issue.

At hearing, COVA inquired of Mr. Ludsen concerning uniform rates but did not inquire about the position taken by the utility in Issue 92. COVA's own pre-filed testimony did not address uniform rates but did address COVA's opposition to SSU's proposed rate structure. At the hearing, Citrus County addressed questions concerning uniform statewide rates to staff's witness Williams.

Staff believes that the substance of COVA's and Citrus County's argument against uniform rates is substantially the same as their argument against the utility's initial proposal. Put most fundamentally, their position is that anything other than a stand alone basis for setting rates is unfair to the COVA and Citrus County residents who are customers of SSU. Many of the same arguments made against the utility's proposal apply to the imposition of statewide rates. All of these arguments were addressed in Order No. PSC-93-0423-FOF-WS.

In the posthearing briefs, Citrus County argued that the Commission was without jurisdiction to implement uniform rates. (BR pp. 2-5) Staff believes that this argument, which forms the bulk of the County's six page brief, establishes that the County was in fact on notice that uniform rates were truly at issue in this proceeding.

In summary, COVA and Citrus County cannot argue inadequacy of notice of uniform rates where it was an issue set forth in the prehearing order, where there was an opportunity to present testimony and cross-examine witnesses on this issue, and where there was an opportunity to address this issue in the posthearing briefs. It is no error on the Commission's part that these parties failed to fully explore the issue of uniform rates.

Based on the foregoing, staff recommends that COVA's and Citrus County's Motions for Reconsideration of uniform, statewide rates on the basis of inadequate notice be denied. The parties have failed to show any mistake of fact, law or policy related to notice.

JURISDICTION

COVA's motion for reconsideration once again questions the Commission's authority to set uniform, statewide rates. This issue was fully addressed on page 93 of Order No. PSC-93-0423-FOF-WS where the Commission discussed its authority set out in Section 367.081, Florida Statutes. As part of its argument that the PSC is without authority to set uniform, statewide rates in this proceeding, Citrus County argues certain matters which are outside the record (that staff coerced SSU to undertake "certain expensive projects" to enable the utility to acquire small water and wastewater systems), matters previously raised and addressed in the Order and matters argued in its brief (that uniform rates are an illegal tax). Staff believes these are not appropriate points for reconsideration. The parties have failed to show any error on the part of the Commission regarding exercise of its jurisdiction.

FREE WHEELING POLICY MAKING

Both COVA and Citrus County characterize the Commission's decision to approve uniform, statewide rates as "free wheeling policy making." COVA bases its argument on a prior Commission decision set forth in Order No. 21202, issued May 8, 1989, which directed staff to initiate rulemaking on uniform rates. Staff notes that the Order also states:

> We believe there is merit to the concept of statewide uniform rates. Cost savings due to a reduction in accounting, data processing and rate case expense can be passed on to the ratepayers.
>
> Order No. 21202 at 186

Order No. 21202 was the culmination of a docket opened by the Commission to investigate possible alternatives to existing rate-setting procedures for water and wastewater utilities. A broad range of issues and changes recommended by the docket have been implemented through statutory revisions or rulemaking. Although no rule has been developed regarding the requirements for implementing uniform rates, there has been insufficient data on which to base such a rule, and there has not been a pressing need to go forward with a rule on uniform rates that would have a general, industry-wide application.

Staff believes that the decision in this case to implement uniform statewide rates is consistent with McDonald v. Dept. of Banking and Finance, 346 So.2d 569 (1st DCA 1977), which states in pertinent part:

> While the Florida APA thus requires rulemaking for policy statements of general applicability, it also recognizes the inevitability and desirability of refining incipient agency policy through adjudication of individual cases. There are quantitative limits to the detail of policy that can effectively be promulgated as rules, or assimilated; and even the agency that knows its policy may wisely sharpen its purposes through adjudication before casting rules.
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> Id. at 581
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> The agency's Final Order in 120.57 proceedings must describe its "policy within the agency's exercise of delegated discretion" sufficiently for judicial review. Section 120.68(7). By requiring agency explanation of any deviation from "an agency rule, an officially stated policy, or a prior agency practice," Section 120.68(12)(b) recognizes there may be "officially stated agency policy" otherwise than in "an agency rule"; and, since all agency action tends under the APA to become either a rule or an order, such other "officially stated agency policy" is necessarily recorded in agency orders.
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> Id. at 582

The PSC has explained its decision in this case sufficiently for judicial review. It has not unlawfully established a rule or policy for developing uniform rates for all water and wastewater utilities. The Commission determined, based on the record before it in this docket, that in this rate proceeding, uniform, statewide rates are appropriate.

Based on the foregoing, staff believes that the PSC properly acted within its discretion and jurisdiction in approving statewide

rates and that no basis for reconsideration has been shown by the parties.

RECORD EVIDENCE

Citrus County and COVA both assert that the record does not support the Commission's findings. Specifically, Citrus County alleges that Mr. Williams' testimony concerning statewide rates putting water and wastewater utilities on par with electric and telephone cases is "false"; that his testimony concerning rate stability is "only remotely true"; and that a conclusion that statewide rates recognize economies of scale is "obviously false". Citrus County also asserts that Mr. Williams' testimony that uniform rates would be more simply derived, easily understood and economically implemented is irrelevant, self serving and "legally unacceptable". COVA also asserts that the findings concerning the benefits of statewide rates are not supported by the record and are self-serving. In addition, COVA states that there is no evidence to support the Commission's conclusion that no customers would be harmed by the imposition of uniform rates.

SSU's response states that the Commission relied on competent and substantial evidence in reaching its decision and that the parties are merely expressing their disagreement with the Commission's decision.

To the extent the parties seek to have this Commission accept reargumentsor receive new evidence, their motions for reconsideration are not appropriate. The parties did not refute Mr. Williams' testimony at hearing using the arguments now raised on reconsideration. For example, Citrus County argues that it is wrong to compare non-interconnected water and wastewater plants to fully interconnected electric and telephone companies. The County is apparently unaware of previous Commission decisions that physical interconnection of water and wastewater plants is not required for rate setting. See Orders Nos. 22794, April 10, 1990; 23111, June 25, 1990; and 23834, December 4, 1990.

Had the testimony of witness Williams been properly challenged during the hearing on cross-examination, Citrus County's allegations could have been addressed in the Commission's Order. Staff believes the findings and conclusions of the Final Order are supported by competent and substantial evidence. Staff also believes that the parties have failed to show that the Commission overlooked or failed to consider any evidence with regard to

witness Williams' testimony. For these reasons, the motions to reconsider, as they relate to the sufficiency of the evidence, should be denied.

UNFAIR RATES

COVA alleges in its motion that the rates set by Order No. PSC-93-0423-FOF-WS are unfair, unreasonable and discriminatory because the uniform statewide rates are significantly higher than stand-alone rates for the customers of Sugarmill Woods. The Commission's Order explains that the Commission compared the uniform rates against stand-alone rates. The Order states that, of the one hundred twenty seven systems, only seven would have had lower water and wastewater rates on a stand-alone basis. In the Order's concluding paragraph, at page 95 the Commission found as follows:

> Based on that comparison, we find that the wide disparity of rates calculated on a stand-alone basis, coupled with the above cited benefits of uniform, statewide rates, outweigh the benefits of the traditional approach of setting rates on a stand-alone basis.
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> Order No. PSC-93-0423-FOF-WS, p. 95

In Utilities Operating Co. v. Mayo, 264 So.2d 321 (Fla. 1967), the Supreme Court determined that what is fair and reasonable is a conclusion to be formed by the regulatory body on the basis of the facts presented. That is what the Commission has done by comparing the benefits of statewide rates against those of stand-alone rates and by measuring the impact of those rates across the entire customer base of SSU. The rates set by the Commission are neither arbitrary nor unreasonable. Therefore, staff recommends that this portion of COVA's motion for reconsideration be denied because COVA has failed to show an error in fact, law, or policy or to show any point which the Commission overlooked or failed to consider.

ADDITIONAL ARGUMENTS

COVA also argues that Order No. PSC-93-0423-FOF-WS impairs contracts, denies effective representation, and allows disincentives to efficiency. These new arguments are all arguments against the implementation of uniform rates which could have and should have been raised during the hearing process. In consideration of the foregoing, staff believes that COVA's petition on these issues does not raise any point that the Commission

overlooked or failed to consider. Therefore, staff recommends that portion of COVA's motion addressing impairment of contracts, denial of effective representation and disincentives to efficiency be denied.

CONCLUSION

Based on the discussion above, staff recommends that both COVA's and Citrus County's Motions for Reconsideration be denied.

ISSUE 3: Should SSU's motion for reconsideration regarding OPEBs be granted?

RECOMMENDATION: No. (Bedell, Lester)

STAFF ANALYSIS: In its motion for reconsideration, the utility argues that the Commission erred in adjusting the utility's FAS 106 costs to reflect costs associated with an OPEB (other post-retirement benefits) plan referred to as Proposed Plan 2. The utility argues that the Commission's decision to base OPEB costs on the lowest cost plan proposal rather than on the utility's "substantive" plan is inconsistent with Commission policy. In its response to this motion, OPC argues that the utility is merely rearguing its case and impermissibly seeking to bolster its case with evidence from another docket. Each issue raised by the utility is discussed separately below.

The first issue raised by SSU is that the Order mischaracterized witness Gangnon's testimony about the OPEB plan. Staff believes that the record supports a finding that witness Gangnon's testimony was contradictory in that he acknowledged that SSU was considering several plans in its actuarial study as a way to reduce OPEB costs (EX 38, p 36), while also stating that "there are no present plans to reduce either the kinds or level of post-retirement benefits now or in the future." (TR 452)

The second issue of SSU's Motion is a request by the utility that the Commission take official recognition of the rebuttal testimony of Bert T. Phillips and the rebuttal testimony and exhibits of Peter J. Neuwirth, which are part of the record in Docket No. 920655-WS. As grounds for this request, the utility relies on the Commission's decision in Order No. 20489 issued December 21, 1988 (Docket No. 871394-TP - Review of the Requirements Appropriate for Alternative Operator Services and Public Telephones.)

Staff believes that Order No. 20489 merely demonstrates that the Commission took official recognition of a federal court decision entered into after the final hearing in the docket but before the Commission's final decision. The utility's request here is that the Commission take official recognition after its final decision. Further review of Order No. 20489 also shows that the Commission denied, as untimely, GTE's motion for official recognition of an order where the motion for official recognition was filed on the day of the Special Agenda Conference. SSU also cites as authority for its position Sections 90.202 (6) and 120. 61, Florida Statutes. While these statutory provisions allow sworn testimony from the record of one case to be entered into the record of another case, none of them provides that it is appropriate to supplement the record posthearing or after entry of a Final Order. Therefore, staff recommends that the utility's request to supplement the record with the testimony and exhibits of witnesses Neuwirth and Phillips should be denied as an untimely request. Staff further recommends that supplementing the record is not appropriate or necessary for the disposition of SSU's motion for reconsideration.

The third issue raised by SSU as basis for reconsideration of the FAS 106 cost adjustments is the reference in Order No. PSC-93-0301-FOF-WS to witness Gangnon's lack of knowledge concerning the OPEB plan. SSU's argument in this regard attempts to make a factual issue out of the Commission's discretion to give evidence whatever weight that it deserves. In this case, Mr. Gangnon's testimony was not given the weight the utility desired. This is not a mistake in fact, law or policy.

The fourth issue raised by the utility is that there is no competent substantial evidence to support the Commission's conclusion that there is a trend to reduce FAS 106 costs and that, therefore, the OPEB Proposed Plan 2 is appropriate. Again, because the utility disagrees with the Commission's decision, the utility reargues the evidence which the Commission has found reasonable and on which the Commission relied. The utility has shown no mistake of fact, law or policy.

The fifth issue raised by SSU is that there is no competent substantial evidence supporting witness Montanaro's testimony "that SSU may restructure its benefits plan to reduce costs in the future." The Commission's decision was based on the evidence in the record that showed that SSU was considering various alternative plans that might reduce its OPEB expenses, as well as all the other evidence in the record that did not support the level of OPEB

expenses SSU requested. For this reason, Staff is not recommending reconsideration of the Commission's decision.

SSU's sixth argument for reconsideration of the Commission's FAS 106 adjustments is that use of FAS 106 requires reliance on the utility's substantive plan over any other plan. SSU asserts that the Commission's decision to base OPEB costs on the lowest cost plan proposal rather than the utility's "substantive" plan is inconsistent with Commission policy. Staff disagrees with this characterization. Adjustments to OPEB plans have been made in several dockets. For example, in rate cases for both the United Telephone Company of Florida and the Florida Power Corporation, the Commission approved FAS 106 for ratemaking purposes. The Commission also made adjustments to FAS 106 costs requested by the companies in these orders. (See Orders Nos. PSC-92-0708-FOF-TL, p. 36 and PSC-92-1197-FOF-EI, p. 11) Staff believes that the Commission in making this regulatory adjustment, did not overlook or fail to consider any point made by SSU. Staff notes that, for regulatory purposes, the Commission is not bound by the substantive plan.

Finally, the last argument raised by SSU is similar to its first. In its petition for reconsideration, the utility asserts that Issue 50 of Staff's recommendation contains no discussion of inconsistencies in Mr. Gangnon's testimony. The utility's argument is without merit. In Issue 50, staff specifically states:

> staff notes that witness Gangnon was unfamiliar with the history of SSU's OPEB plan. For example, when initially asked at his deposition, he did not know how long SSU had offered OPEBs, he did not know if the benefits had increased, decreased, or remained the same, and he did not know how many employees were enrolled in the benefits plan. (EX 38, pp. 5-6) Further, witness Gangnon was not familiar with SSU's policy decisions behind its decision to provide OPEBs. (EX 38, p. 12) He provided a late-filed deposition exhibit stating that SSU informally offered OPEBs beginning in the early 1980s and that a formal OPEB policy was adopted on January 1, 1991. (EX 38, p. 51)

Therefore, in consideration of the foregoing it is apparent that the late-filed deposition exhibit was inconsistent with Mr. Gangnon's testimony.

Implicit in the Commission's adjustment in Order No. PSC-93-0423-FOF-WS to the requested OPEB expense was the Commission's determination that the utility failed to prove that the OPEB plan requested in the MFRs is prudent. However, since the record supports a finding that SSU will provide OPEBs and incur an OPEB expense at some level, the utility should be allowed an OPEB expense based on the lowest cost plan.

In conclusion, staff believes the utility's motion for reconsideration of the FAS 106 cost adjustments should be denied because the utility has not shown any mistake of law, fact or policy in its motion.

ISSUE 4: Should SSU's motion for reconsideration regarding the Hernando County Bulk Wastewater Rate be granted?

RECOMMENDATION: No. (Bedell, Golden)

STAFF ANALYSIS: In its motion for reconsideration, SSU alleges that the Commission violated the utility's due process rights by increasing the gallonage and base facility charge (BFC) rates for the Hernando County bulk wastewater service rates. SSU states that no issue was raised on these rates, that there has been no opportunity to address these rates, and nothing was introduced into the record on which the Commission could rely when determining the rates.

According to the utility's motion, if the Commission's final rates are implemented, Hernando County may reduce the amount of wastewater sent to SSU for treatment or may find alternative treatment sources altogether. COVA was the only party that filed a response to this portion of the utility's motion. In response to SSU's motion, COVA argues in opposition to statewide rates as discussed in Issue 1. In addition, COVA argues that Hernando County should not be treated differently from other customers similarly situated.

In its MFRs, the utility did not request special rate consideration for its bulk service customer, Hernando County. Nothing in the utility's application or in the record establishes that Hernando County, as a bulk wastewater service customer, should be treated differently than any other general service customer in this proceeding.

As shown by the utility's application, no specific rate for a bulk service customer was requested. (EX 35, MFR Vol III Book 4 of 6, pp 161-162, Schedule No. E-2A, pp 35 & 36 of 48.) The utility has failed to show that the Commission made an error in setting the bulk wastewater service customer's rate where there was no distinction among general service customers and where rates were set for the Spring Hill System's general service customers in the same manner all general service customers' rates were set, as explained at pp. 93-105 of Order No. PSC-93-0423-FOF-WS. Further, the threat of the loss of a portion of Hernando County's wastewater described in the utility's motion is not in the record and may not be relied on for reconsideration.

Based on the foregoing, staff recommends denial of the motion for reconsideration of bulk wastewater rates for Hernando County. The Commission did not overlook or fail to consider the Hernando County rates; the utility failed to request specific consideration of the Hernando County wastewater bulk service rates separate or apart from those for any other general service customers. The Commission is under no obligation to ferret out "special" consideration for individual customers, particularly where neither the utility nor any other party brings such a request before the Commission.

ISSUE 5: Should OPC's Petition for Reconsideration regarding the gain on sale of St. Augustine Shores be granted?

RECOMMENDATION: No. (Bedell, Merchant)

STAFF ANALYSIS: In its petition, OPC argues that the Commission ignored several facts in the record relating to the gain on sale of the St. Augustine Shores System (SAS). Specifically, OPC refers to Exhibit 24, Order No. 17168, issued February 10, 1987, concerning SSU's request for a rate increase in Lake County. In that Order, the Commission found that the gain or loss on the sale of a system should be recognized in setting rates for the remaining systems. OPC states that by failing to treat the gain on sale of SAS consistently with the loss on the sale in Order No. 17168, the Commission has erred in its treatment of the gain on sale associated with SAS. OPC contends that the Commission's decision did not address Exhibit 24 and did not make any distinction between the two cases that would justify the differing treatments.

OPC also argues it is inconsistent to allow recognition of the loss on the abandonment of the Salt Springs water system in this docket. In addition, OPC references Commissioners' comments and questions from the hearing questioning the reason for treating a loss on abandonment and gain on condemnation differently.

OPC concludes with the statement that the Commission's Order requires the customers to pay for utility expenses related to its condemnation-resisting efforts. OPC asserts that Exhibit 140 shows that, during the test year, the utility included approximately $21,000 of expense associated with an attempted condemnation of Deltona Lakes by Volusia County. OPC argues that if the customers have no stake in the outcome, they ought not foot the bill for the utility's ensuring that the outcome is as expensive for the condemning authority as possible.

SSU, in its response to OPC's petition, states that the Order on reconsideration 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. It argues that in past proceedings where the Commission has required utilities to share a gain, the facts demonstrate that the gains were realized on the sale of assets, as distinguished from a condemnation. SSU distinguishes those cases in which the Commission has allowed a gain on sale from a gain on the condemnation of assets. SSU also argues that OPC, by referring to Order No. 17168 (Ex 24), has impermissibly raised a new argument and has failed to show any error in not addressing Order No. 17168 in the Final Order because OPC's brief makes no mention of Order No. 17168.

SSU further argues that the decision on the gain on sale in Order No. 17168 is an aberration and is inconsistent with the position of the parties on losses on sales or condemnations in this proceeding. SSU states in its response that OPC raises a new argument when it attempts to draw a parallel between the treatment of an abandonment and a condemnation. The utility argues that OPC's initial premise for comparison of an abandonment loss and a condemnation gain is faulty in that the ratepayers in this proceeding shoulder no additional expense as a result of the abandoned Salt Springs system. The utility also argues that, consistent with the Mad Hatter case (Order No. PSC-93-0295-FOF-W, issued February 24, 1993), if the decision to abandon plant was prudent, any resulting loss should be borne by the ratepayers. The utility argues that this standard presents an entirely different set of circumstances than those arising out of a condemnation of an entire non-Commission regulated system with stand-alone rates.

The utility concludes with a summation of items that distinguish an abandonment of property from a condemnation of an entire system: (1) an abandonment is an ordinary part of doing business -- a condemnation is not; (2) an abandonment only becomes extraordinary if the utility does not have sufficient reserves to accommodate the abandonment -- condemnations are not part of the normal course of a utility's operations; (3) customers formerly served by abandoned plant remain customers of the utility -- when an entire system is condemned, the affected customers no longer are customers of the utility; and (4) 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.

Staff believes the Commission's decision in this case was based on the record evidence presented. OPC has failed to show that the Order is inconsistent with other Commission decisions based on the same record evidence where the gain was the result of a condemnation. Staff has reviewed the 1987 rate case Order No. 17168 cited by OPC. Staff believes that 17168 is a prior inconsistent decision, in that Order No. 17168 simply does not contain enough facts to determine whether Skyline Hill's customers ever contributed to the recovery of any return on investment in the system. It is the fact that SAS customers never contributed to the recovery of any return on investment, that distinguishes this case from Order No. 17168. Because the facts of Order No. 17168 were not fully explored at the hearing in Docket No. 920199, it is impossible to determine whether the facts in that case were the same as presented in this docket. Even if the circumstances were the same, the order in that case was a proposed agency action, which was not based on evidence adduced through the hearing process.

OPC's argument that the customers of SSU should not have to foot the bill for condemnation-resisting efforts is an entirely new issue not previously raised in this case. The expenses OPC refers to are expenses incurred in condemnation proceedings which did not result in condemnation. Expenses incurred in condemnation proceedings which do result in condemnation are not included in the rate case. (TR 606 and EX 47)

As OPC's petition for reconsideration of the gain on sale of issue does not present any arguments that were not previously considered by the Commission, or show any error in fact, law or

policy, staff recommends that OPC's request for reconsideration be denied.

ISSUE 6: Should OPC's Petition for Reconsideration regarding the negative acquisition adjustment be granted?

RECOMMENDATION: No. (Bedell)

STAFF ANALYSIS: OPC argues that the Commission overlooked and failed to consider evidence which contradicts the Commission's conclusion that no extraordinary circumstances had been shown to support an acquisition adjustment. OPC further argues that the Commission failed to address the Deltona high cost debt in the acquisition adjustment issue and that purchasing a system with such high cost debt is an extraordinary circumstance.

Staff believes that OPC misapprehends the meaning of the reference to the acquisition adjustment issue made on page 49 of the Final Order. OPC's position on the cost of debt issue was that the cost of debt should be adjusted to reflect the utility's failure to take the cost of debt into consideration when determining a purchase price. The Commission concluded that this was not an appropriate basis for a cost of debt adjustment. Staff believes that it was not the intention of, nor was it the obligation of, the Commission to apply OPC's position on cost of debt to the acquisition adjustment issue, as inferred by OPC.

OPC did not argue in its brief, nor did it present evidence or arguments, that extraordinary circumstances existed to justify a negative acquisition adjustment. Staff agrees with OPC that facts are in the record dealing with the purchase price, the high cost of debt and the subject of a negative acquisition adjustment. However, OPC's position and arguments on the negative acquisition adjustment issue was that, "the Commission cannot allow a return on investment which was not already made in providing utility service to customers."

Staff believes that OPC is trying to reargue its case. Having failed to win its point on the cost of debt issue, it appears that OPC is now taking a new position on the negative acquisition issue, while at the same time employing evidence presented for other issues in support of it. Staff believes OPC has failed to show that the Commission overlooked or failed to consider any point made with regard to the negative acquisition issue.

ISSUE 7: Should this docket be closed?

RECOMMENDATION: Yes, this docket should be closed after the issuance of the Final Order reflecting the disposition of the pending motions for reconsideration of Order No. PSC-93-0423-FOF-WS. (Bedell)

STAFF ANALYSIS: No refund is pending in this docket, therefore the docket may be closed upon the issuance of the Commission's order disposing of the motions for reconsideration.