

M E M O R A N D U M

August 19, 1993

TO: DIVISION OF RECORDS AND REPORTING

FROM: CATHERINE BEDELL, DIVISION OF LEGAL SERVICES *CB*

RE: ✓ DOCKET NO. 930647-WS - JOINT PETITION OF CITRUS COUNTY, HERNANDO COUNTY, CYPRESS AND OAKS VILLAGES ASSOCIATION, SPRING HILL CIVIC ASSOCIATION, AND FLORIDA STATE SENATOR GINNY BROWN-WAITE FOR FULL COMMISSION HEARING TO SET SYSTEM-BY-SYSTEM, STAND-ALONE RATES FOR WATER AND WASTEWATER SYSTEMS OPERATED IN BREVARD, CHARLOTTE/LEE, CITRUS, CLAY, COLLIER, DUVAL, HERNANDO, HIGHLANDS, LAKE, MARION, MARTIN, NASSAU, ORANGE, OSCEOLA, PASCO, PUTNAM, SEMINOLE, VOLUSIA, AND WASHINGTON COUNTIES BY SOUTHERN STATES UTILITIES, INC.

AND

✓ DOCKET NO. 930648-WS - REQUEST BY CYPRESS AND OAKS VILLAGES ASSOCIATION, INC. FOR INVESTIGATION OF PUBLICITY, ADVERTISING, AND/OR LOBBYING ACTIVITIES OF SOUTHERN STATES UTILITIES, INC. IN BREVARD, CHARLOTTE/LEE, CITRUS, CLAY, COLLIER, DUVAL, HERNANDO, HIGHLANDS, LAKE, MARION, MARTIN, NASSAU, ORANGE, OSCEOLA, PASCO, PUTNAM, SEMINOLE, VOLUSIA, AND WASHINGTON COUNTIES.

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On August 16, 1993, Document No. 08833 was filed in Docket No. 930647-WS. Because the document also contains a Request for Investigation which will be handled in Docket No. 930648-WS, we would like for a copy of Document No. 08833 to also be filed in 930648-WS. Thanks.

CB/dr

Attachment

cc: Division of Water and Wastewater (Willis, Messer)  
All parties of record

*Done 8/20/93*  
*JD*

FLORIDA PUBLIC SERVICE COMMISSION

Fletcher Building  
101 East Gaines Street  
Tallahassee, Florida 32399-0850

M E M O R A N D U M

August 19, 1993

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING

FROM: DIVISION OF LEGAL SERVICES (BEDELL) *EB*  
DIVISION OF WATER AND WASTEWATER (MESSER, WILLIS) *MS*

RE: UTILITY: SOUTHERN STATES UTILITIES, INC.  
DOCKET NO. 930647-WS  
COUNTY: BREVARD, CHARLOTTE/LEE, CITRUS, CLAY, COLLIER,  
DUVAL, HERNANDO, HIGHLANDS, LAKE, MARION, MARTIN, NASSAU,  
ORANGE, OSCEOLA, PASCO, PUTNAM, SEMINOLE, VOLUSIA, AND  
WASHINGTON

CASE: JOINT PETITION OF CITRUS COUNTY, HERNANDO COUNTY,  
CYPRESS AND OAKS VILLAGES ASSOCIATION, SPRING HILL CIVIC  
ASSOCIATION, AND FLORIDA STATE SENATOR GINNY BROWN-WAITE  
FOR FULL COMMISSION HEARING TO SET SYSTEM-BY-SYSTEM,  
STAND-ALONE RATES FOR WATER AND WASTEWATER SYSTEMS

AGENDA: AUGUST 31, 1993 - CONTROVERSIAL - PARTIES MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: I:\PSC\LEG\WP\930647.RCM

CASE BACKGROUND

By Order No. PSC-93-0423-FOF-WS, issued March 22, 1993, this Commission set uniform, statewide rates for 127 water and wastewater systems of Southern States Utilities, Inc. (SSU). Motions for reconsideration were filed by several parties, including Office of Public Counsel, Citrus County, and Cypress and Oak Villages Association (COVA). Reconsideration was denied by Commission votes on July 20, and August 3, 1993.

On July 2, 1992, a Joint Petition for Full Commission Hearing for the Purpose of Setting System by System, Stand Alone Water and Wastewater Rates for Certain Systems Operated by SSU was filed by Citrus County, Hernando County, COVA, Spring Hill Civic Association (Spring Hill), and Senator Ginny Brown-Waite (Petitioners). On

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an order which disposes of a motion for reconsideration. Thus, staff recommends that the Joint Petition be dismissed under Rule 25-22.060 (1)(a), Florida Administrative Code.

The utility also raises several procedural grounds for dismissing the Joint Petition stating that the Joint Petition fails to meet the requirements of Rule 25-22.036 (6), Florida Administrative Code. Staff recommends that this is not an appropriate basis for dismissal for the following reasons: the Petitioners could refile a corrected pleading in compliance with the rules; no prejudice to SSU has been shown; and the pleadings, as filed, are sufficient for the Commission to rule on. Staff believes that SSU's arguments that the Joint Petition fails to provide a concise statement of the ultimate facts alleged or to identify the known disputed issues of material fact, actually support SSU's position, and staff's conclusion above, that the Joint Petition is in fact only a thinly disguised Motion for Reconsideration. The essence of the Joint Petition is that the full Commission should grant a hearing on SSU rates because there were errors in the decision made in Docket No. 920199-WS. Again, staff believes that this is an inappropriate pleading seeking nothing more than reconsideration of Order No. PSC-93-0423-FOF-WS.

#### JOINT PETITION

The Joint Petition, filed by both parties and non-parties to the recent SSU rate case, Docket No. 920199-WS, raises several points in support of their request to set system-by-system, stand-alone rates for SSU. First, the Petitioners argue that a case of such statewide impact as the SSU rate case should have been heard by the full Commission. The Petitioners also allege that the statewide, uniform rates authorized by the Commission require some customers of SSU to unlawfully subsidize expenses of systems which are not physically connected; that the Commission is without legal authority to set statewide rates; that there was inadequate notice that uniform rates would be set; and finally, that the decision to set uniform statewide rates is not supported by competent, substantial evidence. As recommended above, staff believes that the Joint Petition should be dismissed. Individual parts of the Joint Petition are further addressed below.

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#### Full Commission Assignment

The first issue raised by the Petitioners requests that pursuant to Section 350.01(6), Florida Statutes, the full Commission hear and decide the matters presented by the Joint Petition. The full Commission has been assigned to this docket.

As the basis of their request for assignment of the full Commission, the Petitioners rely on the failure of the Commission to grant OPC's motion for the full Commission to hear the SSU rate case in Docket No. 920199-WS. To the extent that the Joint Petition seeks to revisit the Commission's decision in Order No. PSC-92-1020-FOF-WS, issued September 21, 1992, ruling that the full Commission would not hear the SSU rate case, staff believes that the Joint Petition should be dismissed as it is in the nature of an untimely motion for reconsideration. No new information has been presented. The Petitioners simply disagree with the Commission's decision in Orders Nos. PSC-92-1020-FOF-WS and PSC-93-0423-FOF-WS.

#### Notice

The Petitioners argue that there was insufficient notice of uniform, statewide rates in Docket No. 920199-WS, and that the Commission, "owes individuals who might be affected by Commission proceedings clear and precise notice of how their substantial interests may be affected." Again, to the extent that the Joint Petition seeks to revisit the Commission's decision on reconsideration of the final order in Docket No. 920199-WS, staff believes that the Joint Petition should be dismissed as an untimely motion for reconsideration. The Petitioners have presented no new information.

This portion of the Joint Petition also seeks to have the Commission require staff to provide notice of its final position in the rate case prior to filing testimony, to file certain testimony and to include certain issues in this proceeding, if the Joint Petition is granted. Staff believes that the Petitioners seek to have staff participate in a rate proceeding as though staff is a party to the proceedings. Traditionally, staff's role in Commission proceedings is not an adversarial party role, but an informational role to insure that a complete record is developed in the hearing process on which the Commissioners may base informed decisions. While staff appreciates the advice from the Petitioners

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adoption of uniform statewide rates. Again, to the extent that the Joint Petition seeks to revisit the Commission's decision on reconsideration of the final order in Docket No. 920199-WS, staff believes that the Joint Petition should be dismissed as inappropriate and untimely. Based on their allegation that there was no competent substantial evidence to support the Commission's decision to authorize uniform, statewide rates, the Joint Petition also seeks to direct the requirements of testimony to be filed by staff and parties should the Joint Petition be granted. As discussed in a earlier portion of this recommendation, staff believes that this is an inappropriate request which should be denied.

#### Summary

In summary, staff believes that the Joint Petition fails to establish any grounds for relief and as discussed below, staff recommends that the petition should be dismissed. Further, because the Petitioners have failed to identify the statute under which they seek relief, staff is unable to determine whether the Petitioners seek to have the Commission process this petition under Sections 367.081, 367.0822, 367.091 or some other provision of Chapter 367, Florida Statutes. Staff believes that if the Joint Petition is to be considered anything other than a motion for reconsideration, it may be considered an application to change rates filed under Section 367.091, Florida Statutes, which requires rate applications to be made in writing as prescribed by rule. As a rate application, it fails to meet the requirements of Commission Rules regarding rate adjustments, and should be dismissed. See, Part V, Rule 25-30, Florida Administrative Code. If the Petitioners seek to have the Commissioners set rates based on Section 367.081, staff believes that the Joint Petition must be considered a request to reconsider the Commission's recent decision setting rates in Order No. PSC-93-0423-FOF-WS. As such, it must be dismissed as untimely.

Essentially, the Joint Petition is based on the Petitioners' view that the rates set in Order No. PSC-93-0423-FOF-WS are not fair just and reasonable as to them and the other customers they represent. The Commission's Order No. PSC-93-0423-FOF-WS explains thoroughly the basis for the fairness, justness and reasonableness of those rates. No new evidence or argument has been raised.

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RESPONSE TO MOTION TO DISMISS

The Petitioners' Response to the Motion to Dismiss was filed on August 16, 1993, and is late pursuant to Rule 25-22.037(2), Florida Administrative Code. The filing date of SSU's Motion to Dismiss was July 22, 1983. A response to the motion was due within 7 days of service, plus 5 days for mailing. The Petitioners' Response was filed 25 days after the Motion to Dismiss was filed. Neither an explanation for the untimeliness of the response, nor a request for an extension of time was included in the filing. Based on the untimeliness alone, the response need not be considered by the Commission. Staff recommends that the pleading be struck as untimely.

However, if the Commission should choose to consider the response in reaching a decision in this docket, staff believes that it adds nothing to the initial pleadings. The response attempts to cure the technical deficiencies in the Joint Petition by more fully identifying the Petitioners, describing more specifically how they are affected by the Commission's decision in the SSU rate case in Docket No. 920199-WS, and reiterating that the reason for filing the Joint Petition is to correct deficiencies of the uniform statewide rate structure. The response states that the Joint Petition represents, "... a plea to the full Commission by tens of thousands of aggrieved customers..." Staff is at a loss to understand this claim. The Commission has received more letters in support of the uniform rates than opposed to the uniform rates. Further, Order No. PSC-93-0423-FOF-WS found that of the 127 systems involved in Docket No. 920199-WS, only seven locations would have had lower combined water and wastewater rates under a stand-alone rate structure.

In conclusion, staff recommends that the Motion to Dismiss be granted and the Joint Petition be dismissed with prejudice.