



Public Service Commission

-M-E-M-O-R-A-N-D-U-M-

DATE: September 7, 1995
TO: Chairman Susan Clark
 Commissioner Terry Deason
 Commissioner Joe Garcia
 Commissioner Julia Johnson
 Commissioner Diane Kiesling
FROM: Maggi O'Sullivan, Division of Legal Services *MO*
RE: Docket No. 920199-WS -- Southern States Utilities, Inc.

On April 6, 1995, the First District Court of Appeals reversed in part and affirmed in part Order No. PSC-93-0423-FOF-WS, in which the Commission determined final rates for Southern States Utilities, Inc. The court subsequently issued a mandate remanding the matter back to the Commission for disposition consistent with the court's ruling. On August 31, 1995, Staff filed a recommendation addressing the court's mandate.

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Final decision in this matter was originally made by Commissioners Clark and Beard, with Chairman Deason taking part after a tie vote was cast on a particular issue. The matter was assigned to Commissioners Clark, Beard, Deason, and Johnson in order to address the motions for reconsideration that were filed after Order No. PSC-93-0423 was issued. The docket has since been assigned to all Commissioners.

Although Section 350.01(5), Florida Statutes, requires that only those commissioners assigned to a proceeding are entitled to participate in a final decision, the Chairman may assign a substitute. Florida case law indicates that when a matter is remanded to an agency or board, the fact that there are new members of the collegial body does not preclude those new members from taking action on the case. The members should "be quite familiar with the record of the original proceeding but they [do] not have to have heard the original testimony." Veasey v. Board of Public Instruction, 247 So.2d 80, 82 (Fla. 4th DCA 1971), citing Cooper v. State Board of Medical Examiners, 217 P2d. 630. The court in Veasey instructed the members of the school board to "examine, consider, and review the original record, and make new findings of fact based thereon." Id. at 83.

In this docket, Commissioners who did not take part in the hearing or the review of the record upon reconsideration have been assigned to make a decision on the District Court's mandate. In order to comply with the requirements of law, all Commissioners, including those who were assigned to the docket after the order on reconsideration was filed, should be familiar with the record in this matter.

DOCUMENT NUMBER-DATE
 08923 SEP 11 85
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The record in this proceeding is currently on file with the Division of Records and Reporting. Additionally, Staff's recommendation cites the transcript in its discussion on the issue of the appropriate rate structure, and addresses the testimony of the primary witnesses on this issue: Joseph Cresse, Forrest Ludsdan, and John Williams. To facilitate the review process, Staff will also make available portions of the transcript which deal specifically with rate structure.

Please let Staff know if you have any questions regarding the record in this matter.

cc: **Rob Vandiver, General Counsel**
Noreen Davis, Director of Legal Services
Division of Legal Services (Jaber)
Division of Water and Wastewater (Willis)
Division of Records and Reporting
All parties of record