BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application for transfer of facilities from ORANGE/ OSCEOLA UTILITIES, INC. to SOUTHERN STATES UTILITIES, INC. in Osceola County, including transfer of Certificate No. 289-S, amendment of Certificate No. 066-W for additional territory, and cancellation of Certificate No. 335-W.	DOCKET NO. 941151-WS ORDER NO. PSC-96-1185-AS-WS ISSUED: September 20, 1996

The following Commissioners participated in the disposition of this matter:

J. TERRY DEASON
JOE GARCIA
JULIA L. JOHNSON

ORDER APPROVING SETTLEMENT OFFER

BY THE COMMISSION:

BACKGROUND

Orange-Osceola Utilities, Inc. (OOU or utility) is a Class A utility that provides water and wastewater service to customers in the Buenaventura Lakes development in Osceola County. According to its 1994 annual report, OOU was serving 8,740 water customers and 7,010 wastewater customers, producing operating revenues of $1,166,244 for water service and $2,563,684 for wastewater service. The corresponding income amounts were $279,913 for water and $593,738 for wastewater.

Southern States Utilities, Inc. (SSU), also a Class A utility, was providing water and wastewater service in 1994 for 73,399 water customers and 34,662 wastewater customers. According to its annual report, SSU recorded operating revenues of $23,833,363 for water service and $16,757,514 for wastewater service. The corresponding income amounts were $3,209,786 for water and $2,360,462 for wastewater.

On October 27, 1994, SSU filed an application to transfer operating facilities from OOU to SSU. We last established OOU's rate base in Docket No. 871134-WS, based upon the test year ended June 30, 1987. During the audit investigation for the current docket, our audit staff observed that OOU capitalized interest

after its last rate case, without prior approval. Staff recommended removal of the capitalized interest for two reasons. First, OOU is required by Rule 25-30.115, Florida Administrative Code, to maintain its accounting records in conformity with the Uniform System of Accounts adopted by the National Association of Regulatory Utility Commissioners. This accounting system does not sanction capitalizing interest during construction; instead, it permits inclusion of an Allowance for Funds Used During Construction (AFUDC) component. And, second, pursuant to Rule 25-30.116(5), Florida Administrative Code, "No utility may charge or change its AFUDC rate without prior Commission approval."

However, OOU argued that we allowed rate base inclusion of capitalized interest in two of OOU's rate applications, which OOU construed as continued authorization for future capitalization of interest. OOU further noted that both cases were concluded after Rule 25-30.116, Florida Administrative Code, was adopted. Asserting that its methodology for capitalizing interest was applied consistently from June 30, 1987 through December 31, 1994 and having invested over $10,000,000 in construction projects, OOU claimed that it reasonably relied on prior Commission decisions when it capitalized interest.

By Order No. PSC-95-1325-FOF-WS, issued October 31, 1995, we approved the transfer of OOU's service area to SSU. In that Order, we recognized that although we have occasionally allowed retroactive application of AFUDC, in the majority of cases we have denied it. Still, as we observed, conflicting standards are present: while generally accepted accounting standards require capitalization of AFUDC or interest, our rules require advance approval. However, after considering all factors, we decided that OOU's capitalized interest between July 1, 1987 and December 31, 1994 should be removed.

On November 21, 1995, OOU filed a protest to Order No. PSC-95-1325-FOF-WS and a request for hearing pursuant to the provisions of Chapter 120.57(1), Florida Statutes. The protest was limited to our disallowance of capitalized interest in the utility's rate base. On November 30, 1995, SSU filed a petition to intervene in these proceedings. We granted SSU's request to intervene by Order No. PSC-96-0088-PCO-WS, issued January 17, 1996.

By Order No. PSC-96-0018-PCO-WS, issued January 8, 1996, we scheduled an administrative hearing for July 1 and 2, 1996. By Order No. PSC-96-0413-S-WS, issued March 25, 1996, we approved a settlement stipulation between OOU and SSU, whereby the parties stipulated all issues related to net book value of the former OOU

facilities, except the issue on capitalized interest. By Order No. PSC-96-0480-PCO-WS, issued April 5, 1996, we revised the hearing date to August 5, 1996.

On June 5, 1996, OOU filed a contemporaneous petition for an administrative hearing before the Division of Administrative Hearings (DOAH) to challenge the validity of Rule 25-30.116, Florida Administrative Code, and certain Commission non-rule policy statements concerning denial of capitalized interest. According to OOU's request for a DOAH hearing, the challenged rule and the non-rule policy statements deprive OOU of an opportunity to earn a return on an expenditure that all parties acknowledge as a "real cost." OOU asserted that a determination by an administrative law judge regarding the disputed matters would narrow the focus of our examination in this docket, thereby promoting judicial economy.

On July 17, 1996, OOU filed a Proposed Offer of Settlement. On July 24, 1996, OOU filed a revised Proposed Offer of Settlement with minor changes.

COMPARISON OF CAPITALIZED INTEREST AND AFUDC

In accordance with Financial Accounting Standard (FAS) No. 34, interest charges during the construction period should be capitalized to fully recognize the cost of construction and to associate those interest charges with future earnings. In short, interest charges are capitalized rather than expensed, thereby enlarging current income while increasing depreciation charges in future years. However, pursuant to FAS No. 71, if the Commission that regulates the utility requires accrual of AFUDC, the utility should record AFUDC instead of capitalized interest. FAS No. 71, in paragraph 15, states in part:

> 15. In some cases, a regulator requires an enterprise subject to its authority to capitalize, as part of the cost of plant and equipment, the cost of financing construction as partially by borrowings and partially by equity. A computed interest cost and a designated cost of equity funds are capitalized.... After the construction is completed, the resulting capitalized cost is the basis for depreciation and unrecovered investment for rate-making purposes. In such cases, the amounts capitalized for rate-making purposes as part of the cost of acquiring the assets shall be capitalized for financial reporting purposes instead of the amount of

> interest that would be capitalized in accordance with FASB Statement No. 34, Capitalization of Interest Cost.

Capitalized interest and capitalized AFUDC are similar. The distinction concerns the presumed source of funding: debt funding alone for capitalized interest or the utility's embedded cost of capital for AFUDC. The underlying rationale for capitalizing AFUDC is that the exact source of funding cannot be traced. AFUDC includes the net cost for the period of construction of borrowed funds used for construction purposes and a reasonable rate on other funds when so used.

HISTORY OF COMMISSION AFUDC RULE

Although AFUDC has been allowed for telephone, electric and gas utilities for many years, we did not require approval in advance when AFUDC was initially established. However, in the early 1980's, when interest rates increased dramatically, we became concerned about the consequent impact on AFUDC. As a result, on August 8, 1986, we adopted a common rule for all industries regarding AFUDC that addressed which projects were eligible, how the rate was calculated, and a requirement for prior approval of the rate. The rule also provided that upon our own motion, we could initiate a proceeding to change a utility's AFUDC rate.

When this rule was adopted, most water and wastewater utilities under our jurisdiction were capitalizing interest instead of AFUDC. In late 1988, we expressed our concern regarding numerous requests for retroactive approval of AFUDC. Consequently, a Staff Advisory Bulletin (SAB) on AFUDC was sent to all utilities in January, 1989. SAB No. 31, issued January 27, 1989, stated:

> If a utility has not received an approved AFUDC rate from this Commission, the utility may petition the Commission to establish a rate and for authority to apply the rate retroactively to previous years. If the Commission declines to grant the petition for retroactive application, any AFUDC charged between August 11, 1986, and the effective date of a utility's approved AFUDC rate established by order of this Commission would not be allowed in determining the appropriate rates and charges of the utility.

Although not legally binding, the SAB served to communicate staff's interpretation of our implementation of the AFUDC rule. Through SAB No. 31, staff offered additional notice to utilities that they should file for AFUDC approval or risk removal of unapproved AFUDC and denial of retroactive application. Whether a given utility subject to our jurisdiction at that time was notified by the SAB cannot be proven and is not controlling. However, all water and wastewater utilities are notified when a rule revision is proposed and/or implemented.

The significance of Rule 25-30.116, Florida Administrative Code, speaks for itself. Utilities are charged with knowledge of the Commission's rules and statutes. Ignorance of a rule is not acceptable grounds for non-compliance. "It is a common maxim, familiar to all minds that 'ignorance of the law' will not excuse any person, either civilly or criminally." Barlow v. United States, 32 U.S. 404, 411 (1833). If a utility's accounting treatment departed from a prescribed rule, or accounting practice, we are not precluded from correcting that error. The rule itself is a warning that a future disallowance may occur.

COMMISSION PRACTICE REGARDING UNAPPROVED AFUDC

OOU observed that we approved retroactive application of AFUDC for Mid-County Services, Inc. (Mid-County), by Order No. PSC-93-1713-FOF-WS, issued November 30, 1993. In its last rate case, Docket No. 921293-SU, Mid-County, (a wholly-owned subsidiary of Utilities, Inc.) accrued AFUDC charges without prior approval. Staff recommended removal of the unauthorized AFUDC charges. However, by Order No. PSC-93-1713-FOF-SU, issued November, 30, 1993, we approved retroactive accrual of the AFUDC charges. We stated:

> In this instance, we find it appropriate to retroactively approve the AFUDC rate for this utility. Since the acquisition of this utility in 1991, Utilities, Inc., has made substantial plant upgrades to bring this utility into compliance with the current DEP standards. Upon consideration, this rate shall be applied retroactively with an effective date beginning May 1, 1991.

However, in a subsequent proceeding involving Utilities, Inc., we rejected rate base inclusion of unauthorized AFUDC charges. We stated in Order No. PSC-95-0574-FOF-WS, issued May 9, 1995, in Docket No. 940917-WS:

> By the actions in the Mid-County case, we find that the utility was specifically noticed of the Commission's past history of denying retroactive application of an AFUDC rate. We further believe, that if this utility was truly concerned about this issue, it would have filed an AFUDC application soon after the order was issued in the Mid-County rate case. However, we do note that after the staff audit report was issued, which recommended removal of the accrued AFUDC charges, Utilities, Inc. filed a petition for approval of AFUDC rates for all of its systems, under our jurisdiction, that do not have approved AFUDC rates. Based on the above, we find it appropriate to remove the accrued AFUDC charges.

In a proceeding involving SSU, we denied retroactive approval of AFUDC pursuant to Order No. 22150, issued November 6, 1989, in Docket No. 890233-WS. We stated:

> We note that our Staff recommended that SSUI be allowed to retroactively book AFUDC associated with the cost of construction from 1985 to 1988. Point O' Woods did not have an approved AFUDC rate; however, its books reflected capitalized interest associated with the construction costs. We believe that it would be inappropriate to allow SSUI to record AFUDC. This was an expense incurred by Point O' Woods and Point O' Woods did not request it prior to or at the time of construction.

In some cases, we have authorized a utility to accrue AFUDC for prior periods. However, retroactive accrual of AFUDC was more commonly allowed in the early years following adoption of Rule 25-30.116, Florida Administrative Code. In those cases, for construction preceding the period used to derive the going-forward AFUDC rate, we typically reduced the utility's cost of capital by 100 basis points as a penalty for failure to file in a timely manner. For example, in Order No. 21352, issued on June 7, 1989, in Docket No. 890477-WS, we found:

> Lehigh undertook projects in 1988 without making a timely request for approval of an AFUDC rate. Lehigh now requests that the AFUDC rate of 11.03% be applied retroactively

> to January 1, 1988. Although Lehigh's request for an AFUDC rate is well founded, we will subject a request for retroactive application to a penalty since the request should have been made in the prior year. We, therefore, grant Lehigh's request for retroactive application of the AFUDC rate, subject to a 100 basis point penalty. Thus, 10.03% is Lehigh's AFUDC rate for eligible projects from January 1, 1988, to December 31, 1988.

In similar cases involving Mid-Clay Corporation (Order No. 22194, issued November 20, 1989), and Aloha Utilities, Inc. (Order No. 22206, issued November 21, 1989), we granted retroactive accrual of an AFUDC rate subject to the same 100 basis point reduction for filing the application after commencement of construction.

In this proceeding, OOU is not requesting recalculation of an AFUDC rate for prior years, but rather approval to retain the interest that was actually capitalized. However, as noted below, in all instances, the capitalized interest is at least 100 basis points less than a comparably calculated AFUDC rate.

OOU'S ARGUMENTS FOR APPROVAL OF CAPITALIZED INTEREST

Mr. Frank Baker, the chief financial officer for OOU, prepared testimony for this proceeding, and reported therein that OOU's rate base would have been larger if OOU had capitalized AFUDC instead of interest. He testified that OOU was required to capitalize interest for both tax and accounting purposes. He further stated that given this Commission's prior approval of OOU's capitalized interest, his knowledge and experience informed him that generally accepted accounting principles would dictate capitalization of interest, not accrual of AFUDC. Mr. Baker testified that he practiced for twelve years as a certified public accountant with Price Waterhouse before his current position.

OOU and SSU both acknowledge that rate base inclusion of capitalized interest directly affects the ultimate purchase price for the acquired assets. They also agree that the disputed interest was incurred to fund construction of utility assets. In response to Mr. Baker's statement regarding comparative investment levels, we asked OOU to prepare a calculation of the amount of AFUDC that would have occurred if AFUDC had been authorized in the last proceeding, but with the following conditions. First, the amount should be calculated yearly to recognize any changes to the capital accounts and their respective cost rates. Second, the

hypothetical AFUDC rate would be reduced by one percent to penalize the utility for failing to secure prior Commission approval. However, we further asked OOU to acknowledge that some of the capitalized interest was assigned to ineligible or completed projects.

Based upon information received from OOU, our calculations confirm that the resulting AFUDC rate would exceed the amount of interest actually capitalized. The interest actually capitalized by OOU ranged from 8.65 percent to 10 percent, whereas the hypothetical AFUDC rate would range from 9.75 percent to 10.46 percent. If OOU had capitalized an AFUDC rate equal to its last authorized cost of capital, or 11.46 percent, its investment would have increased accordingly. Using this information and construction detail provided by the auditors, we calculated comparative AFUDC and capitalized interest amounts. Thus, while OOU actually capitalized $392,836 in interest charges, the approximate AFUDC amount using the last approved cost of capital would total $453,966. The approximate AFUDC amount, assuming recalculation each year and a one percent penalty provision, would total $403,945.

With respect to our inquiry regarding ineligible projects, OOU agreed that the disputed interest on those projects, or $5,663 for water and $46,482 for wastewater, should be removed if the provision for capitalized interest is allowed. This reduces the overall allowance for capitalized interest from $392,836 to $340,691 for the combined water and wastewater systems, or $23,021 for water and $317,670 for wastewater. Corresponding adjustments to accumulated depreciation are also required. Following exclusion of the ineligible projects, the corrected provisions for accumulated depreciation are $2,426 for water and $83,678 for wastewater, as of December 31, 1994. Thus, the net addition to rate base is $20,595 for the water division and $233,992 for the wastewater division. Therefore, using the rate base amounts approved in Order No. PSC-96-0413-S-WS, upon inclusion of the above additions, the appropriate rate base amounts at December 31, 1994, are $2,167,013 for water and $7,586,192 for wastewater.

OOU'S DOAH CHALLENGE

OOU has also challenged the validity of Rule 25-30.116, Florida Administrative Code, in a petition for an administrative ruling before the DOAH. OOU contends that capitalized interest is not identical to AFUDC, thereby avoiding possible restrictions regarding prior approval. OOU contends that certain sections of Rule 25-30.116, Florida Administrative Code, and various Commission non-rule policy statements contained in Order No. PSC-95-1325-FOF-

WS, are "invalid exercises of delegated legislative authority" that improperly restrict recovery of interest money paid to fund construction of plant facilities. OOU contends that Chapter 367, Florida Statutes, and the Florida and United States Constitutions, grant OOU the opportunity to earn a fair return on its investment in utility property that is being denied by the challenged rule and policy statements. OOU contends that the disputed interest during construction is a "real cost" acknowledged by all parties. OOU contends that the challenged rule and non-rule policy statements enlarge, modify, or contravene laws, lack adequate standards to prevent exercise of unbridled discretion, are arbitrary and capricious, and are vague. OOU contends a prohibition against rate base inclusion of capitalized interest under the assumption that AFUDC and capitalized interest are synonymous may be misplaced and worthy of rejection. OOU contends that our reliance on a Staff Advisory Bulletin to preclude retroactive approval of AFUDC is a "rule" that warrants adoption under appropriate rulemaking procedures. Further, OOU contends that this policy is an invalid exercise of delegated legislative authority that has been applied arbitrarily, capriciously, and inconsistently. OOU further contends that certain technical sections of Rule 25-30.116, Florida Administrative Code, improperly limit a utility's ability to recover actual investment dollars. OOU contends that the disputed rule and non-rule policy statements contain numerous misconceptions and improperly characterized terms.

SETTLEMENT OFFER

On July 17, 1996, OOU filed a Proposed Offer of Settlement, in which the utility offered to withdraw its protest of Order No. PSC-95-1325-FOF-WS and its DOAH petition. In exchange for its withdrawal of its protest and petition, OOU requests that we grant its capitalized interest, excluding that portion that was associated with ineligible projects. On July 24, 1996, OOU filed a revised Proposed Offer of Settlement with minor modifications to the original settlement proposal.

We find it appropriate to accept OOU's Proposed Offer of Settlement. In accordance with FAS No. 71, if we had ordered OOU to accrue AFUDC rather than interest, OOU's investment would have been greater due to the more expensive return on equity consideration. However, absent such prior approval, OOU was not consequently excused from complying with FAS No. 34 regarding the default obligation to capitalize interest if AFUDC was not authorized. OOU was obligated to capitalize interest under generally accepted accounting principles and tax principles.

By Order No. 20434, issued December 8, 1988, in Docket No. 871134-WS, upon reviewing OOU's reported investment in an effluent disposal area, we recognized that OOU "also capitalized interest on these contracts." By Order No. 17366, issued April 6, 1987, in Docket No. 850031-WS, we also noted OOU's practice of capitalizing interest. Accordingly, we believe OOU was reasonably entitled to rely upon our prior decisions as a foundation to continue its practice of capitalizing interest during the construction period.

Furthermore, as discussed earlier, the amount of capitalized interest was less than the amount of AFUDC that could have been capitalized if OOU had requested approval of AFUDC in Docket No. 871134-WS. The capitalized interest is also less than the potential AFUDC that results when certain limiting conditions are imposed, specifically, recalculation on an annual basis and assessment of a one percent penalty for failure to obtain prior Commission approval. For water and wastewater utilities, capitalized interest is usually considered another form of AFUDC. In this case, since the interest actually capitalized by OOU is less than comparative AFUDC charges, the resulting rate base amount is consequently smaller, which directly benefits the consumer.

After elimination of ineligible projects, the net addition to rate base is $20,595 for the water division and $233,992 for the wastewater division. Pursuant to Rule 25-30.116, Florida Administrative Code, this Commission may approve retroactive application of an AFUDC rate to a prior period in certain cases. We believe that retroactive approval of the capitalized interest is appropriate in this case. Accordingly, we hereby approve the offer of settlement which results in increasing OOU's rate base determination to reflect retroactive approval of the interest that was actually capitalized to eligible projects. Upon our approval of OOU's Proposed Offer of Settlement, no further action is required. Accordingly, this docket shall be closed.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Orange-Osceola Utilities, Inc.'s Proposed Offer of Settlement attached hereto as Attachment A and by reference incorporated herein, is hereby approved. It is further

ORDERED that this docket shall be closed.

By ORDER of the Florida Public Service Commission, this 20th day of September, 1996.

BLANCA S. BAYÓ, Director
Division of Records and Reporting

by: _____
Chief, Bureau of Records

(S E A L)

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water and/or wastewater utility by filing a notice of appeal with the Director, Division of Records and Reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900 (a), Florida Rules of Appellate Procedure.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application for Transfer of Facilities from ORANGE-OSCEOLA UTILITIES, INC. to SOUTHERN STATES UTILITIES, INC. in Osceola County, including transfer of Certificate No. 289-S, amendment of Certificate No. 066-W for additional territory, and cancellation of Certificate No. 335-W.	Docket No. 941151-WS

PROPOSED OFFER OF SETTLEMENT

COMES NOW, Orange-Osceola Utilities, Inc., (hereinafter "Utility" or "OOU"), by and through its undersigned attorneys, pursuant to the provisions of Rule 25-30.116, Florida Administrative Code ("F.A.C.") and files this Proposed Offer of Settlement, and in support thereof states as follows:

1. On October 31, 1995, the Florida Public Service Commission (hereinafter "Commission") issued Order No. PSC-95-1325-FOF-WS in Docket No. 941151-WS proposing to reduce the water and wastewater rate bases of OOU by a net amount of approximately $325,000 through adjustments to eliminate capitalized interest booked by the Utility for the period from the Utility's last rate case through December 31, 1994.

2. The Commission's action in Order No. PSC-95-1325-FOF-WS to disallow capitalized interest was based upon an interpretation of Commission Rule 25-30.116, F.A.C.

3. By Petition dated November 21, 1995, OOU filed a challenge to Order No. PSC-95-1325-FOF-WS contesting the disallowance of capitalized interest in OOU's rate base. By Order dated January 17, 1995, Southern States Utilities, Inc.

(hereinafter "SSU") was granted intervenor status in that proceeding (hereinafter the "PSC Proceeding") by Order No. PSC-96-0088-PCO-WS.

4. By Petition filed with the Division of Administrative Hearings on June 5, 1996, OOU challenged the validity of Commission Rule 25-30.116, and requested determination of the invalidity of non-rule policy statements of the Commission regarding capitalized interest and a determination that the statements by the PSC on this subject matter were rules in violation of Section 120.535(1), Florida Statutes (hereinafter the "Rule Challenge Proceeding").

5. OOU and the Commission Staff, as well as the Intervenor, SSU, have recently held discussions in hopes of settling both the PSC Proceeding and the Rule Challenge Proceeding and the issues outlined therein. As a result of those recent settlement discussions, OOU is offering this settlement, contingent upon the Commission's approval, with the following specific provisions and conditions:

A. The parties agree that to the extent that the interest capitalized by OOU from the end of the test year in its last general rate proceeding through the year ended December 31, 1994, is less than the AFUDC rate calculated in accordance with the Commission's Rule 25-30.116, utilizing the beginning and year end average capital structures for each intervening year and the last authorized rate of return on equity authorized in Docket No. 871134-WS, less a penalty of 1 percentage point, (for failure to obtain pre-approval),

results in a rate higher than the rate utilized in capitalizing interest which OOU used in actually capitalizing interest on its books, the capitalized interest booked by the Utility should be recognized in rate base of the Seller in this transfer proceeding and in calculating the rate base of the Buyer prospectively.

B. OOU would agree for the purposes of this settlement proposal only, that the adjustment proposed by the Commission Staff to disallow capitalization of interest because certain projects were ineligible under the terms of Rule 25-30.116 for accrual of AFUDC, is reasonable and appropriate.

C. To the extent the Commission accepts recognition of capitalized interest under the terms outlined in Subparagraph A above, as settlement of the Petition on Proposed Agency Action Order No. PSC-95-1325-FOF-WS, OOU will withdraw its Rule Challenge Proceeding currently pending at the Division of Administrative Hearings in Case No. 96-2663RU.

6. In anticipation of the possible settlement of these proceedings, Petitioner has moved for and received a 60 day continuance of the rule challenge petition, whereby that hearing originally scheduled for July 16, 1996, was rescheduled for hearing on September 9, 1996, pursuant to order issued by the Division of Administrative Hearings administrative law judge on July 9, 1996.

7. It is the undersigned counsel's understanding that an order has been or will soon be issued in this PSC Proceeding

continuing the hearing currently scheduled for August 5, 1996, in anticipation of this proposed settlement.

WHEREFORE, OOU requests that the Florida Public Service Commission enter its order accepting the stipulated settlement of the Petition for Hearing in Docket No. 941151-WS under the terms as outlined herein, revising the findings on this issue in Order No. PSC-95-1325-FOF-WS and closing Docket No. 941151-WS. To the extent that the Commission accepts this Settlement Proposal and issues its order in recognition of these settlement provisions, OOU will withdraw its rulemaking petition currently pending before the Division of Administrative Hearings in Case No. 96-2663RU.

Respectfully submitted this 24th day of July, 1996, by:

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