

FLORIDA PUBLIC SERVICE COMMISSION
Capital Circle Office Center, 2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

M E M O R A N D U M

September 26, 1996

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING

FROM: DIVISION OF LEGAL SERVICES (O'SULLIVAN) *ms*
DIVISION OF WATER AND WASTEWATER (RENDELL) *APC*
DIVISION OF AUDITING AND FINANCIAL ANALYSIS (LESTER, ALM
JONES) *SLJ*

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

CASE: APPLICATION FOR A RATE INCREASE

AGENDA: OCTOBER 8, 1996 - REGULAR AGENDA - DECISION ON STAY OF
REMAND ORDER (POST-APPEAL) - PARTICIPATION LIMITED TO
COMMISSIONERS AND STAFF

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: I:\PSC\LEG\WP\SSUSTAY.RCM *920199WS.RCM*

CASE BACKGROUND

On May 11, 1992, Southern States Utilities, Inc., (SSU or utility) filed an application to increase the rates and charges for 127 of its water and wastewater service areas regulated by this Commission. The official date of filing was established as June 17, 1992. By Order No. PSC-93-0423-FOF-WS, issued March 22, 1993, the Commission approved an increase in the utility's final rates and charges, basing the rates on a uniform rate structure. On September 15, 1993, Commission staff approved the revised tariff sheets and the utility proceeded to implement the final rates.

Notices of appeal of Order No. PSC-93-0423-FOF-WS were filed with the First District Court of Appeal by Citrus County and Cypress and Oak Villages (COVA), now known as Sugarmill Woods Civic

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FPSC-RECORDS/REPORTING

DOCKET NO. 920199-WS
September 26, 1996

Association (Sugarmill Woods) and the Office of Public Counsel (OPC). On October 18, 1993, the utility filed a Motion to Vacate Automatic Stay, which the Commission granted by Order No. PSC-93-1788-FOF-WS, issued December 14, 1993.

On April 6, 1995, the Commission's decision in Order No. PSC-93-0423-FOF-WS was reversed in part and affirmed in part by the First District Court of Appeal, Citrus County v. Southern States Utilities, Inc., 656 So. 2d 1307 (Fla. 1st DCA 1995). On October 19, 1995, Order No. PSC-95-1292-FOF-WS was issued, Order Complying with Mandate, Requiring Refund, and Disposing of Joint Petition (decision on remand). By that Order, the Commission ordered SSU to implement a modified stand alone rate structure, develop rates based on a water benchmark of \$52.00 and a wastewater benchmark of \$65.00, and to refund accordingly. On November 3, 1995, SSU filed a Motion for Reconsideration of Order No. PSC-95-1292-FOF-WS. At the February 20, 1996, Agenda Conference, the Commission, inter alia, voted to deny SSU's motion for reconsideration.

On February 29, 1996, subsequent to the Commission's vote on the utility's motion for reconsideration but prior to the issuance of the order memorializing the vote, the Supreme Court of Florida issued its opinion in GTE Florida, Inc. v. Clark, 668 So.2d 971 (Fla. 1996). By Order No. PSC-96-0406-FOF-WS, issued March 21, 1996, the Commission, after finding that the GTE decision may have an impact on the decision in this case, voted to reconsider on its own motion, its entire decision on remand. The Commission allowed all parties of record in this docket to file briefs "to address the generic issue of what is the appropriate action the Commission should take upon the remand of the SSU decision in light of the GTE decision." At a minimum, the Commission requested that the briefs include discussion on: "whether reopening the record in Docket No. 920199-WS is appropriate, whether refunds are appropriate, and whether a surcharge as set forth in the GTE decision is appropriate." The parties in the docket, with the exception of OPC, filed briefs on April 1, 1996. On May 9, 1996, the City of Keystone Heights, the Marion Oaks Homeowners Association, and the Burnt Store Marina, hereinafter referred to as "petitioners," filed a request for oral argument and a petition to intervene in this docket.

By Order No. PSC-96-1046-FOF-WS, issued August 14, 1996, the Commission affirmed its earlier determination that SSU must make refunds to customers, but could not implement a surcharge to those customers who paid less under the uniform rate structure. The Commission distinguished the GTE decision from the instant case, based upon differences in circumstances. The utility was ordered to make refunds to its customers for the period between the

DOCKET NO. 920199-WS
September 26, 1996

implementation of final rates in September, 1993, and the date that interim rates were placed into effect in Docket No. 950495-WS. The refunds were to be made within 90 days of the issuance of the order. The Commission also, inter alia, denied the petitioner's request for oral argument and petition to intervene.

On September 3, 1996, SSU notified the Commission that it had appealed Order No. PSC-96-1046-FOF-WS to the First District Court of Appeal. On that same date, SSU filed a motion for Stay of Order No. PSC-96-1046-FOF-WS. On September 13, 1996, Sugarmill Woods and Citrus County filed a joint motion in opposition to the request for stay. Neither party filed a request for oral argument. This recommendation addresses SSU's request for a stay, and the appropriate security if the stay is granted.

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission grant SSU's Motion for Stay of Order No. PSC-96-1046-FOF-WS?

RECOMMENDATION: Yes. Because the order involves the refund of monies to customers, the Commission should grant the motion for stay, in accordance with Rule 25-22.061(1), Florida Administrative Code. (O'SULLIVAN)

STAFF ANALYSIS: Order No. PSC-96-1046-FOF-WS requires SSU to refund to affected customers the difference between the amount paid under uniform rates, and the amount that they would have paid under a modified stand-alone rate structure. SSU estimated in its motion that the refund would total approximately \$10 million dollars.

Rule 25-22.061(1)(a), Florida Administrative Code, provides that:

When the order being appealed involves the refund of moneys to customers or a decrease in rates charges to customers, the Commission shall, upon motion filed by the utility or company affected, grant a stay pending judicial proceedings. The stay shall be conditioned upon the posting of good and sufficient bond, or the posting of a corporate undertaking, and such other conditions as the Commission finds appropriate.

SSU contends that Rule 25-22.061(1) requires the Commission to grant the stay. The utility asserts that the language is mandatory and therefore provides no discretion to deny a stay: "The Commission shall...grant a stay pending judicial proceedings."

In their September 13, 1996, joint response, Sugarmill Woods and Citrus County oppose the stay. They contend that in the first appeal taken in this docket, the Commission granted SSU's request to lift the stay, and customers "had to pay money that they would not owe if the appeal was successful." Therefore, basic fairness requires that this order, which benefits the customers, should go into effect pending the appeal. Sugarmill Woods and Citrus County assert that some of the customers may never enjoy the benefits of the refund if it is delayed further. Finally, they state that if the refunds are made and SSU then prevails on appeal, the utility could implement a surcharge to collect the excess refunds.

Rule 25-22.061(1)(a) is mandatory in that the Commission must

DOCKET NO. 920199-WS
September 26, 1996

impose a stay upon request, if the order in question involves a refund and upon posting of a sufficient bond. Sugarmill Woods and Citrus County contend that fairness dictates that because SSU requested and benefitted from the lifting of the stay and the implementation of the final order's rates on the first appeal, the ratepayers should in turn receive the benefit of the implementation of Order No. PSC-96-1046-FOF-WS, which requires refunds to be made. We observe that upon the first appeal, SSU requested and received a lifting of the stay imposed by the appeal by a governmental body, pursuant to Rule 25-22.061(3)(a), Florida Administrative Code. That rule is also mandatory in nature, in that it requires a lifting of the stay as long as appropriate security is provided.

Order No. PSC-96-1046-FOF-WS clearly requires SSU to make a refund. Therefore, Staff recommends that, pursuant to Rule 25-22.061(1)(a), the Commission impose a stay upon Order No. PSC-96-1046-FOF-WS, pending the resolution of the judicial proceedings.

DOCKET NO. 920199-WS
September 26, 1996

ISSUE 2: What is the appropriate security for SSU to post for purpose of the appeal?

RECOMMENDATION: SSU should be required to post a bond in the amount of \$10,000,000. (RENDELL, LESTER, JONES)

STAFF ANALYSIS: Pursuant to Rule 25-30.061(1)(a), Florida Administrative Code, the stay should be conditioned upon the posting of good and sufficient bond, or the posting of a corporate undertaking, and such other conditions as the Commission finds appropriate.

In its motion, filed September 3, 1996, SSU stated that it is prepared to post the specific security required by the Commission. However, in order to be spared the expense of posting a bond, SSU requested that it be allowed to post a corporate undertaking. On September 11, 1996, SSU filed financial statements in support of its request to post a corporate undertaking. On September 13, 1996, Sugarmill Woods and Citrus County filed a response to SSU's motion for a stay.

In their response, Sugarmill Woods and Citrus County state that in the event the Commission determines that a stay should be granted, a bond, rather than a corporate undertaking should be required. They further indicate that SSU's financial statements do not demonstrate that SSU has sufficient shareholder equity in excess of liabilities, or sufficient cash on hand to make the required refund.

According to staff's calculations, an estimated refund based upon 1991 consumption could range as high as \$2,359,639 for water and \$1,352,970 for wastewater. This estimate is for a one year period and does not include interest. Because uniform rates were collected over a two year period, the total amount of refund could be as high as \$10,000,000, including interest. SSU has also indicated in its motion that the potential refund amounts to approximately \$10 million.

A review of the utility's financial statements indicates that the utility cannot support a corporate undertaking for this amount. The criteria for a corporate undertaking include sufficient liquidity, ownership equity, profitability, and interest coverage to guarantee any potential refund. Staff's review indicates that SSU has adequate ownership equity and positive liquidity. However, SSU has marginal interest coverage and minimal profitability. For example, after removing the one-time gain on disposal of assets in 1994, the annual average net income over the last three years is negative. In addition, the average annual amount of net working

DOCKET NO. 920199-WS
September 26, 1996

capital over the last three years is only half of the amount of the potential liability. Staff's analysis of SSU's financial statements is attached to this recommendation as Schedule No. 1.

On December 14, 1995, SSU filed a surety rider which extended the duration and the amount of the bond previously posted for the first appeal in this docket. This rider increased the amount of the original bond to \$8,000,000. Therefore, staff believes that SSU should be required to obtain an additional bond or again increase the original bond sufficient to cover the potential refund.

Further, the bond should state that it will remain in effect during the pendency of the appeal and will be released or terminated upon subsequent order of the Commission addressing the potential refund.

DOCKET NO. 920199-WS, 950495-WS
SOUTHERN STATES UTILITIES, INC.

Schedule No. 1

(A wholly-owned subsidiary of Topeka Group, Inc. which is a wholly-owned sub of Minnesota Power)

FINANCIAL ANALYSIS FOR CORPORATE UNDERTAKING

AMOUNT: \$10,000,000

	December 31,		
	1995	1994	1993
Current Assets	\$18,611,085	\$17,830,473	\$19,789,565
Current Liabilities	11,913,569	13,464,822	13,874,203
Net Working Capital	6,697,516	4,365,651	5,915,362
Current Ratio	1.56	1.32	1.43
Common Equity	\$75,820,383	\$78,177,299	\$77,506,118
Total Debt	128,917,219	107,059,608	110,613,246
Total Investor Capital	204,737,602	185,236,907	188,119,364
Equity Ratio	37.0%	42.2%	41.2%
Interest Expense	\$8,644,542	\$9,902,830	\$8,362,401
EBIT	6,626,033	11,249,948	9,685,883
Interest Coverage	0.77	1.14	1.16
Net Income	(\$2,356,914)	\$712,764	1,029,484
ROE	-3.11%	0.91%	1.33%

Source: Annual Reports for 1993, 1994, and 1995

Net income for Year 1994 has been adjusted by removing the Gain on disposal of assets due to its non-recurring nature. The Income tax expense for Other Income was also adjusted to reflect the removal of the gain on disposal of assets.

The EBIT figure is calculated as follows:

Net Income
+ Income tax expense for Other Income
+ Interest expense
+ Income tax expense from Operating Expenses
EBIT

In order to be conservative, the Income Tax Benefit for Operating Expenses was not included in the calculation since it would have reduced the EBIT figure.