

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application for rate) DOCKET NO. 920199-WS
increase in Brevard, Charlotte/) ORDER NO. PSC-96-0406-FOF-WS
Lee, Citrus, Clay, Duval,) ISSUED: March 21, 1996
Highlands, Lake, Marion, Martin,)
Nassau, Orange, Osceola, Pasco,)
Putnam, Seminole, Volusia, and)
Washington Counties by SOUTHERN)
STATES UTILITIES, INC.; Collier)
County by MARCO SHORES UTILITIES)
(Deltona); Hernando County by)
SPRING HILL UTILITIES (Deltona);)
and Volusia County by DELTONA)
LAKES UTILITIES (Deltona).)
_____)

The following Commissioners participated in the disposition of this matter:

SUSAN F. CLARK, Chairman
J. TERRY DEASON
JOE GARCIA
JULIA L. JOHNSON
DIANE K. KIESLING

ORDER ON RECONSIDERATION OF REMAND DECISION AND
ALLOWING PARTIES TO FILE BRIEFS

BY THE COMMISSION:

Background

Southern States Utilities, Inc. (SSU or utility) is a Class A water and wastewater utility operating in various counties in the State of Florida. On May 11, 1992, SSU 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, pursuant to the provisions of Order No. PSC-93-0423-FOF-WS, Commission Staff approved the revised tariff sheets and the utility proceeded to implement the final rates.

On October 8, 1993, Citrus County and Cypress and Oak Villages (COVA), now known as Sugarmill Woods Civic Association (Sugarmill

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Woods), filed a Notice of Appeal of the Final Order in the First District Court of Appeal. That Notice was amended to include the Commission as a party on October 12, 1993. On October 18, 1993, the utility filed a Motion to Vacate Automatic Stay. By Order No. PSC-93-1788-FOF-WS, issued December 14, 1993, the Commission granted the utility's motion to vacate the automatic stay. The Order on Reconsideration, Order No. PSC-93-1598-FOF-WS, was issued on November 2, 1993. On November 19, 1993, the Office of Public Counsel (OPC) filed its notice of appeal.

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). A mandate was issued by the First District Court of Appeal on July 13, 1995. SSU sought discretionary review by the Florida Supreme Court. The Commission filed a Notice of Joinder and Adoption of SSU's Brief. On October 27, 1995, the Supreme Court denied jurisdiction.

On October 19, 1995, Order No. PSC-95-1292-FOF-WS was issued, Order Complying with Mandate, Requiring Refund, and Disposing of Joint Petition. 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. OPC, Citrus County, Spring Hill Civic Association (Spring Hill), and Sugarmill Woods Civic Association (Sugarmill Woods) filed responses to SSU's motion. Spring Hill is not a party in this docket.

We considered the utility's motion for reconsideration and various other pleadings filed by the parties at the February 20, 1996, Agenda Conference. We denied petitions to intervene filed by Putnam County and the City of Keystone Heights, granted Sugarmill Woods' motion to strike certain affidavits, denied Sugarmill Woods' motion to strike portions of SSU's motion for reconsideration, denied in part and granted in part SSU's motion for reconsideration, and denied SSU's motion to file a reply. The order memorializing the Commission's vote was to be issued on March 11, 1996. On February 29, 1996, the Supreme Court of Florida issued its opinion in GTE Florida, Inc. v. Clark, No. 85,776 (Fla S Ct. Feb. 29, 1996), which we believe may have an impact on our decision in this case. In response to the GTE decision, on March 4, 1996, SSU filed a Notice of Filing and Motion to Vacate Non-Final Order.

Commission's Decision, on its own Motion,
to Reconsider Decision on Remand

In the GTE case, the Supreme Court has reversed the Commission's order implementing the GTE remand. The Court has mandated that GTE be allowed to recover its erroneously disallowed expenses through the use of a surcharge. In its opinion, the Court states that imposition of a surcharge to recover the previously disallowed expenses would not constitute retroactive ratemaking. Further, the Court states that it views "... utility ratemaking as a matter of fairness. Equity requires that both ratepayers and utilities be treated in a similar matter." Id.

Upon reviewing the GTE opinion, we find that the Court's decision raises numerous questions, one of which is whether we are required to allow SSU to backbill the customers who paid less under the uniform rate structure than they would pay under the modified stand alone rate structure. In an attempt to address all of the questions in light of the GTE decision, we believe that is appropriate to reconsider our entire decision on remand as set forth in Order No. PSC-95-1292-FOF-WS.

Accordingly, on our own motion, we find it appropriate to reconsider Order No. PSC-95-1292-FOF-WS. We also find it appropriate to allow all parties of record in Docket No. 920199-WS 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. We request that the briefs include, at a minimum 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.

Briefs shall be filed within 10 days of the GTE decision becoming final. If no party to the GTE case asks for rehearing, the opinion becomes final on March 15, 1996. If a party does ask for rehearing, briefs shall not be necessary pending the Court's final decision.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the Commission, on its own motion, shall reconsider the decision made in Order No. PSC-95-1292-FOF-WS as set forth herein. It is further

ORDERED that all parties of record in Docket No. 920199-WS may file briefs as set forth herein within 10 days of the GTE decision becoming final.

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By ORDER of the Florida Public Service Commission, this 21st
day of March, 1996.

BLANCA S. BAYÓ, Director
Division of Records and Reporting

by: Kay Hays
Chief, Bureau of Records

(S E A L)

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NOTICE OF 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 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 or wastewater utility by filing a notice of appeal with the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, 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.