

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application of Southern)
States Utilities, Inc. for amend-)
ment of Certificate No. 106-W to)
include Wedgewood service area in)
Lake County.)
_____)

DOCKET NO. 891319-WU
ORDER NO. 24371
ISSUED: 4/16/91

The following Commissioners participated in the disposition of this matter:

J. TERRY DEASON
BETTY EASLEY

ORDER APPROVING SETTLEMENT AGREEMENT AND REQUIRING
FILING AN APPLICATION FOR ORIGINAL CERTIFICATE OR
EXEMPTION OR NONJURISDICTIONAL STATUS

BY THE COMMISSION:

BACKGROUND

On November 20, 1989, Southern States Utilities, Inc. (SSUI) filed its application for transfer of the assets of the Wedgewood water system (Wedgewood) and amendment of certificate No. 106-W to include the Wedgewood service area. Wedgewood is a small water system which will serve approximately 150 homes at buildout.

On December 7, 1989, the Office of Public Counsel (OPC) filed its notice of intervention in the proceeding. Additionally, on January 19, 1990, a written objection to the proposed transfer and amendment was filed by the Wedgewood Homeowner's Association (Association). Based upon the objection, this matter was scheduled for hearing on October 15, 1990. However, the parties requested and were granted a continuance of the hearing in order to allow additional time to continue settlement negotiations. This action resulted in the hearing being rescheduled for March 4, 1991. The hearing was canceled based upon the March 1, 1991 filing of a proposed settlement agreement.

Wedgewood had been operating under the non-jurisdictional status granted to Mr. Herbert Stenger, the prior owner of the system, pursuant to Order No. 18905, issued February 22, 1988. This determination was based upon Mr. Stenger's assertion that he would not charge for utility service. Additionally, Mr. Stenger

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stated that the Wedgewood water system would be turned over to the Association when fifty percent of the lots were sold.

On June 14, 1989, SSUI purchased the system. Prior to closing, Mr. Stenger established metered rates without seeking Commission approval; however, he did not install meters, nor did he charge customers pursuant to these rates. Subsequent to the closing, SSUI installed meters and began billing for service in August of the same year. Neither Wedgewood nor SSUI sought Commission approval prior to the transfer of assets.

SETTLEMENT AGREEMENT

Based upon the proposed settlement agreement, filed March 1, 1991, SSUI will withdraw its application, cancel the purchase of the Wedgewood System and convey it back to Mr. Stenger, its original owner. Additionally, SSUI will refund, with interest, a portion of the revenue it collected during its interim ownership of the system. We have been advised that although Mr. Stenger is not a party to the agreement, he is aware of the terms of the settlement and is agreeable to taking back the system. Further, Mr. Stenger may then turn the system over to the Association. The proposed settlement agreement is attached as attachment A of this order and by reference incorporated herein.

After SSUI purchased the system in June, 1989, from Mr. Stenger, the original developer, it began charging for service in August of that year. One of the main concerns of the Association was the water rate charged by SSUI and whether such rate was cost based. SSUI and OPC have agreed to a system specific cost based rate to be used solely for refund purposes. By the settlement agreement, SSUI will recalculate each bill rendered from the inception of billing through the date the system reverts to Mr. Stenger, based upon this rate. All revenue collected in excess of the recalculated revenue will be refunded to the customers who paid such revenue. Interest will be added to the refund in accordance with Rule 25-30.360, Florida Administrative Code. The refund will be completed within ninety days of the order approving the settlement. Upon completion of the refund, SSUI shall file a report verifying same in accordance with Section 25-30.360(7), Florida Administrative Code. The report shall include the calculation of each customer's refund including a calculation of the appropriate interest. The final report shall be filed within ninety days of the date of the order approving the settlement.

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Upon consideration of the above, we approve the settlement agreement as a reasonable resolution of the concerns of the customers. Mr. Stenger will again own the system and SSUI will receive revenue based upon its cost of providing service as if it had been a contract operator. By approving the settlement agreement, we are not approving the cost based rate agreed to by SSUI and OPC for the refund calculation as the appropriate rate for the Wedgewood system.

APPLICATION

Whether Mr. Stenger retains and operates the Wedgewood system or conveys the system to the Association, there will be no Commission approved rates and charges. Either owner would be prohibited from charging customers for service without Commission authorization.

Based upon the uncertainty of ownership, we hold that even though we granted nonjurisdictional status to Mr. Stenger in Order No. 18905, circumstances appear to have changed and Mr. Stenger is hereby required to file an application for an original certificate, or an exemption or a jurisdictional determination within ninety days of the date of the order approving the settlement agreement.

The docket shall remain open pending receipt of the refund report and verification of its correctness. Upon such verification, the docket will be closed administratively.

It is, therefore,

ORDERED by the Florida Public Service Commission that the Proposed Settlement Agreement entered into by Southern States Utilities, Inc., Wedgewood Homeowners Association, Inc. and the Office of Public Counsel is hereby approved. It is further

ORDERED that Mr. Stenger shall file an application for an original certificate, or an exemption or a jurisdictional determination within ninety days of the date of this Order. It is further

ORDERED that this docket shall be closed administratively upon receipt of the refund report and verification of its correctness.

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By ORDER of the Florida Public Service Commission this 16th
day of APRIL, 1991.



STEVE TRIBBLE, Director
Division of Records and Reporting

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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 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 or sewer 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.

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ATTACHMENT A

RECEIVED

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

MAR 01 1991

Application of SOUTHERN STATES)
UTILITIES, INC. for amendment)
of Certificate 106-W to include)
Wedgewood service area in Lake)
County.)

Fl. Pub. Serv. Commission
Docket No. 891319-WU
and Cover

Filed: March 1, 1991

PROPOSED SETTLEMENT

Southern States Utilities, Inc., and the customers of the Wedgewood water system, through their undersigned counsel, agree to the following proposed settlement and request approval of its terms by the Florida Public Service Commission

1. Southern States agrees to withdraw its application in this case, to cancel the purchase of the Wedgewood water system, and to convey it back to Herbert C. Stenger, its original owner.

2. The parties agree that the following rate schedule for water service at Wedgewood shall apply for purposes of calculating a refund: \$4.21 monthly base facility charges for 5/8" meter, (\$10.52 for 1" meter), and a gallonage charge of \$0.45 per 1000 gallons.

3. All revenue derived from rates in excess of the above shall be refunded by Southern States to the customers who paid such revenue. This refund amount, exclusive of interest, and exclusive of billings for service in January and February, 1991, is estimated at \$32,000.00. Interest shall be added to the refund and is to be calculated in the manner provided by Rule 25-30.360, Florida Administrative Code. Payment of the refund shall be completed

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within ninety (90) days of the Commission order approving this settlement.

4. The parties acknowledge that Commission approval of this settlement shall not relieve Mr. Stenger or any subsequent transferee from obtaining Commission approval of certification of the Wedgewood water system or its exemption from Commission regulations.

5. Upon withdrawal of its application, Southern States is willing to act as the system operator, at a mutually agreed upon charge for such services.

6. If the Commission declines to approve this settlement in its entirety and without modification, the proposed settlement shall be deemed void and without prejudice to any of the parties.

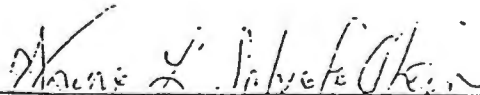
Respectfully submitted,



Marygene Mang
President, Board of Directors
Wedgewood Homeowners
Association, Inc.
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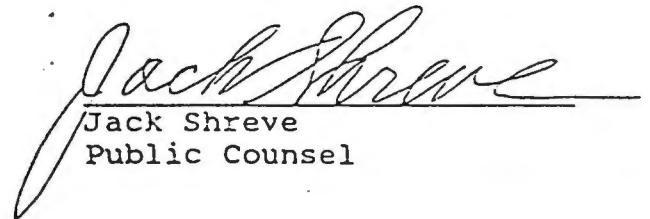
CERTIFICATE OF SERVICE
DOCKET NO. 891319-WU

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail or by *hand-delivery to the following parties on this 1st day of March, 1991.

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