

FLORIDA PUBLIC SERVICE COMMISSION

Fletcher Building
101 East Gaines Street
Tallahassee, Florida 32399-0850

M E M O R A N D U M

August 24, 1992

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING

FROM: DIVISION OF LEGAL SERVICES (BEDELL, FEIL) *CB*
DIVISION OF WATER AND WASTEWATER (WILLIS) *mw* *JLH*

RE: UTILITY: SOUTHERN STATES UTILITIES, INC., MARCO SHORES
UTILITIES (DELTONA), SPRING HILL UTILITIES (DELTONA),
DELTONA LAKES UTILITIES (DELTONA)
DOCKET NO. 920199-WS
COUNTIES: BREVARD, CHARLOTTE/LEE, CITRUS, CLAY, DUVAL,
HERNANDO, HIGHLANDS, LAKE, MARION, MARTIN, NASSAU,
ORANGE, OSCEOLA, PASCO, PUTNAM, SEMINOLE, VOLUSIA,
WASHINGTON

CASE: APPLICATION FOR RATE INCREASE IN BREVARD,
CHARLOTTE/LEE, CITRUS, CLAY, DUVAL, 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)

AGENDA: SEPTEMBER 1, 1992 - CONTROVERSIAL - PARTIES MAY
PARTICIPATE

CRITICAL DATE: SEPTEMBER 8, 1992

SPECIAL INSTRUCTIONS: FULL COMMISSION FOR THIS DECISION

DOCUMENT NUMBER-DATE

09715 AUG 26 1992

FPSC-RECORDS/REPORTS

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CASE BACKGROUND

Southern States Utilities, Inc., and Deltona Utilities, Inc., (SSUI or utility) is a Class A water and wastewater utility operating in various counties in Florida. The utility has filed an application to increase rates and charges for 127 of its water systems regulated by the Florida Public Service Commission. For the systems involved in this rate application, the utility serves a total of 75,055 water customers and 25,9656 wastewater customers.

On May 11, 1992, the utility filed its initial application for increased rates and charges. The filing did not satisfy the minimum filing requirements (MFRs) and was determined deficient. The deficiencies were met on June 17, 1992, which has been established as the official date of filing. In total the utility has requested final rates designed to generate annual revenues of \$17,998,776 for water and \$10,872,112 for wastewater. This represents a total increase according to the MFRs, of \$5,064,353 or 40.16 percent for water and \$3,601,165 or 49.65 percent for wastewater. The requested rates were suspended by Order No. PSC-92-0832-FOF-WS, issued August 18, 1992. At Agenda on August 19, 1992, the Commission authorized the collection of interim rates.

On May 21, 1992, the Office of Public Counsel (OPC) filed a Notice of Intervention in this docket. On August 21, 1992, OPC filed a Petition For Full Commission Assignment. In the petition OPC did not request Oral Argument.

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DISCUSSION OF ISSUES

ISSUE 1: Should the Office of Public Counsel's Petition For Full Commission Assignment be granted?

RECOMMENDATION: No. (Bedell, Feil)

STAFF ANALYSIS: The OPC's petition was filed under the provisions of Section 350.01 (6), Florida Statutes, which provides as follows:

(6) A majority of the commissioners may determine that the full commission shall sit in any proceeding. The public counsel or a person regulated by the Public Service Commission and substantially affected by a proceeding may file a petition that the proceeding be assigned to the full commission. Within 15 days of receipt by the commission of any petition or application, the full commission shall dispose of such petition by majority vote and render a written decision thereon prior to assignment of less than the full commission to a proceeding. In disposing of such petition, the commission shall consider the overall general public interest and impact of the pending proceeding, including but not limited to the following criteria: the magnitude of a rate filing, including the number of customers affected and the total revenues requested; the services rendered to the affected public; the urgency of the requested action; the needs of the consuming public and the utility; value of service involved; the effect on consumer relations, regulatory policies, conservation, economy, competition, public health, and safety of the area involved. If the petition is denied, the commission shall set forth the grounds for denial.

In its petition OPC argues that the importance and magnitude of this case require the assignment of the full Commission and that the risk of any delay of the case beyond the time at which the utility could place its requested rates into effect due to the

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assignment of the full Commission is minimal. OPC further argues that Rule 25-22.0355, Florida Administrative Code, which requires that a request for assignment of the full Commission shall be specified in the initial pleading, is advisory and does not compel the Commission to consider the timeliness of this Petition.

Section 350.01(6), Florida Statutes, requires that the Commission consider the factors enumerated in the quoted language above when determining whether OPC's petition should be granted. Staff recommends that upon consideration of these factors, the Commission deny OPC's petition.

The magnitude of this rate proceeding is unprecedented in the water and wastewater industry. However, staff disagrees with OPC's assertion that the risk of failing to meet statutory deadlines would be minimal if the petition were granted. Under the present Commission workload, with several major rate cases pending in all industries and with statutory time constraints looming in all of those cases, it would not be possible for the Commission to meet its statutory obligations if the full Commission were assigned to this docket. It is inherent in the Commission's fulfillment of its statutory obligations that it make assignments of Commissioners to cases based on the practical constraints involved in processing those cases. It is certainly within the overall public interest, which is the ultimate consideration set forth in Section 350.01(6), Florida Statutes, that the Commission carry out its statutory obligations within the time parameters provided in the statutes for all of the utility industries within the Commission's jurisdiction.

Staff also recommends that this petition be denied because it was not timely filed. Rule 25-22.0355(4), Florida Administrative Code, provides as follows:

- a) Applicants, petitioners or eligible parties filing a pleading who desire a hearing before the full Commission shall so specify in their initial pleading.
- b) Other persons eligible to make such a request shall do so within 15 days of notice of filing of the

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application or petition, or rendition of an order suspending proposed rates of or of an order initiating a proceeding, whichever occurs first. In each case, these petitions/requests shall be disposed of by a majority of the Commission. Failure to file pleadings timely, and in the manner specified herein, may be considered just cause for denial of such pleadings.

Further, Section 350.01(6), Florida Statutes, contemplates that a petition be filed earlier in proceedings because it requires the Commission to rule "prior to assignment of less than the full commission to a proceeding." In this proceeding, OPC's petition was filed more than two months after the panel had been assigned the schedule set, and the statutory clock had begun to run. Such untimely filing narrows the possibility of assigning the full Commission, as a practical matter, to an impossibility. Rule 25-22.0355(4)(b), Florida Administrative Code, provides that failure to timely file pleadings may be considered just cause for denial of such pleadings. For this reason, staff recommends that the Petition could be denied solely on the basis of timeliness without reaching the merits.

In consideration of the above analysis, staff recommends that OPC's Petition For Full Commission Assignment be denied.