

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for a rate) DOCKET NO. 900329-WS
increase in Citrus, Martin,) ORDER NO. PSC-92-1192-FOF-WS
Marion, and Charlotte/Lee) ISSUED: 10/20/92
Counties by SOUTHERN STATES)
UTILITIES, INC.; in Collier)
County by MARCO ISLAND)
UTILITIES (DELTONA) and MARCO)
SHORES UTILITIES (DELTONA); in)
Marion County by MARION OAKS)
UTILITIES (UNITED FLORIDA);)
and in Washington County by)
SUNNY HILLS UTILITIES (UNITED)
FLORIDA).)

The following Commissioners participated in the disposition of this matter:

THOMAS M. BEARD, Chairman
SUSAN F. CLARK
J. TERRY DEASON
BETTY EASLEY
LUIS J. LAUREDO

ORDER DENYING OPC'S MOTION TO ENFORCE ORDER NO. 24715,
MOTION FOR WAIVER OF PORTION OF RULE 25-30.360, F.A.C.,
AND REQUEST FOR REFUND CHECKS

BY THE COMMISSION:

CASE BACKGROUND

Southern States Utilities, Inc., (SSU) Deltona Utilities, Inc., (DUI) and United Florida Utilities Corporation (UFUC), collectively referred to as "utility," own and operate numerous water and wastewater systems across the State of Florida. On July 13, 1990, the utility filed a petition for rate relief and its minimum filing requirements (MFRs). The MFRs filed did not contain all of the information required by the Commission's rules. On September 28, 1990, the utility refiled its MFRs. The latter filing was accepted as complete; therefore, September 28, 1990, was established as the official date of filing. On October 15, 1990, however, the utility filed an amended petition which reflected changes made to its MFRs on September 28, 1990. As a result, the official date of filing was changed to October 15, 1990. The approved test year for establishing final rates was the projected

DOCUMENT NUMBER-DATE

12292 OCT 20 1992

REG. RECORDS / DEPARTMENT

twelve-month period ended December 31, 1991, using as a base year the historical year ended December 31, 1989. The interim test period was the twelve-months ended December 31, 1989.

The utility requested interim water rates designed to generate \$1,667,066 in annual revenues. These revenues exceeded test year revenues by \$500,519, an increase of 42.91%. The utility requested interim wastewater rates designed to generate \$3,510,010 in annual revenues. These revenues exceeded test year revenues by \$991,265, an increase of 39.36%. The utility requested no interim increase for Collier County water and Citrus County wastewater.

By Order No. 23860, issued December 11, 1990, this Commission suspended the utility's proposed rates and granted interim rates. The interim rates were calculated by applying a county-wide uniform percentage increase to the current rates for each system in a county. The following is a summary of the interim increases granted:

	<u>Water</u>	<u>Wastewater</u>
Martin County (SSU)	41.92%	57.14%
Charlotte/Lee County (SSU)	42.00%	140.56%
Marion County (UFUC)	50.14%	27.70%
Washington County (UFUC)	50.00%	50.00%
Collier County (DUI)	0.00%	37.59%
Citrus County (SSU)	33.45%	0.00%
Marion County (SSU)	7.11%	99.67%

Interim rates were secured by corporate undertakings totaling \$1,248,083, whereby each entity, SSU, DUI, and UFUC, guaranteed the corporate undertaking of the other two.

An administrative hearing was held February 11-16, 1991. By Order No. 24715, issued, June 26, 1991, the Commission denied the utility's rate request and ordered a refund. By Order No. 25122, issued September 26, 1991, the Commission denied the utility's Motion for Reconsideration, Motion for Stay, and Motion for Leave to File Reply to Citizens' Response to Motion for Reconsideration.

On October 28, 1991, the utility filed a Notice of Appeal and a Motion for Stay of Portion of Order No. 24715. By Order No. 25422, issued December 6, 1992, we granted the utility's request for a stay. We rejected the utility's offered security of a

corporate undertaking guaranteed by Topeka Group, Inc., the parent company of SSU, DUI, and UFUC, as a condition of the stay. Instead, we required that the utility provide letters of credit or bonds for \$2,859,889 or, in the alternative, letters of credit or bonds for the \$1,248,083 in interim revenues previously collected (which were secured by the corporate undertaking) and establish escrow accounts in which to deposit all future interim revenues collected. The utility elected to file an irrevocable letter of credit for \$2,859,889 as security.

By opinion filed July 16, 1992, in Case No. 91-3500, the First District Court of Appeal (DCA) affirmed the Commission's action in Order No. 24715; and on August 18, 1992, the DCA issued its Mandate.

On August 20, 1992, the Office of Public Counsel (OPC) filed a Motion to Enforce Order 24715, Motion for Waiver of Portion of Rule 25-30.360, F.A.C., and Request for Refund Checks. On September 1, 1992, the utility filed a response. This Order disposes of OPC's motion.

OPC's MOTION

In its motion, OPC relates the pertinent portion of the Case Background, as set forth above, and explains that according to Rule 9.310(e) of the Florida Rules of Appellate Procedure, the stay entered by the Commission was lifted automatically when the DCA issued its Mandate on August 18, 1992.

OPC then quotes the applicable Commission Rule, Rule 25-30.360(5), Florida Administrative Code, which states in pertinent part,

Method of Refund Distribution. For those customers still on the system, a credit shall be made on the bill. In the event the refund is for a greater amount than the bill, the remainder of the credit shall be carried forward until the refund is completed. If the customer so requests, a check for any negative balance must be sent to the customer within ten (10) days of the request.

OPC then asserts,

Although interest is to be paid on the refunds, the interim rates have amounted to an involuntary loan from customers to the [utility]. The Citizens have long been deprived of the use of their money and are entitled to its immediate return.

In consideration of the above, OPC requests that the Commission waive that portion of Rule 25-30.360(5), Florida Administrative Code, which contemplates the utility's refunding by means of a credit on future bills and moves the Commission to order the utility to immediately issue refund checks. Thus, OPC seeks to have the utility issue refund checks regardless of whether a negative balance exists. Further, pursuant to that portion of the above-quoted Commission Rule which requires that refund checks be issued if a negative balance exists, OPC states that, as the legal representative of the customers in this case, it formally "advances a request on behalf of the customers . . . for refund checks."

In its response, the utility maintains Rule 25-30.360(5), Florida Administrative Code, does more than contemplate credits on bills, as OPC characterizes, it mandates credits on bills. In addition, the utility argues,

Public Counsel's Motion does not set forth any unusual circumstances or justification which would support a waiver of that portion of Rule 25-30.360(5) which requires that refunds be implemented through credits on bills.

The utility does not address OPC's request for refund checks pursuant to the negative balance provision of the Rule.

We agree with the utility that OPC has not justified a waiver of the Rule. The moving party has the burden of showing that it is entitled to the relief requested. The justification offered by OPC is insufficient; we do not think that the refund required in this case is any different from refunds required in other cases. Forcing the utility to cut a refund check for every one of the approximately 12,000 water and 7,000 wastewater customers involved would only serve to increase the administrative cost of undertaking the refund.

Additionally, we think OPC's request for refund checks pursuant to the negative balance provision of the Rule is premature, even assuming OPC is the proper person to make the request. The "any negative balance" referred to means any refund owing after the credit is given on the customers' first bills. Under the Rule, the utility calculates the total refund due for each customer, then credits the refund on the first bill. If the amount of the refund for an individual customer exceeds the amount of the customer's first bill, the utility must credit the remainder on the next bill in the absence of a request by the customer for a check for the negative balance. In the instant case, we cannot at this time determine whether any negative balances will appear on any customers' first bills. Thus, OPC's request, if proper, is premature.

The utility acknowledged that, as of September, it has not yet initiated the refund, but it has assured us that it will complete the refund by November. The utility is aware of its refund obligation. Until it becomes apparent that the utility has violated this Commission's Order or its refund rule, we do not think it necessary to take action to enforce the refund.

At the September 29, 1992, Agenda Conference at which we considered this matter, we noted that the refund rule does not require the utility to notify customers of their right to a refund check if a negative balance remains after the first credit is given. The utility verbally agreed to notify its customers of this right when it initiates the refund.

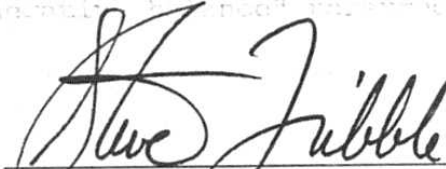
Based on the foregoing, it is, therefore,

ORDERED by the Florida Public Service Commission that the Office of Public Counsel's Motion to Enforce Order 24715, Motion for Waiver of Portion of Rule 25-30.360, F.A.C., and Request for Refund Checks is hereby denied as set forth in the body of this Order.

ORDER NO. PSC-92-1192-FOF-WS
DOCKET NO. 900329-WS
PAGE 6

By ORDER of the Florida Public Service Commission, this 20th
day of October, 1992.

request. The "any normal" request.



STEVE TRIBBLE Director
Division of Records and Reporting

(S E A L)
MJF

Commissioner Laredo dissented on the grounds that he found the
Office of Public Counsel's motion persuasive.

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

ORDER NO. PSC-92-1192-FOF-WS
DOCKET NO. 900329-WS
PAGE 7

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 Civil Procedure. The notice of appeal must be in the form specified in Rule 9.900 (a), Florida Rules of Appellate Procedure.