FLORIDA PUBLIC SERVICE COMMISSION
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M E M O R A N D U M

August 31, 1995

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING

FROM: DIVISION OF LEGAL SERVICES (JABER)
DIVISION OF WATER AND WASTEWATER (HILL, WILLIS, CHASE, RENDELL)
DIVISION OF APPEALS (MOORE, SMITH)

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: SEPTEMBER 12, 1995 - REGULAR AGENDA - CONSIDERATION OF FIRST DISTRICT COURT OF APPEAL REMAND

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: I:\PSC\LEG\WP\920199-R.RCM

CASE 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. According to the information contained in the minimum filing requirements (MFRs), the total water annual revenue filed in this application for 1991 was $12,319,321 and the net operating income was $1,616,165. The total wastewater annual revenue filed in this application for 1991 was $6,669,468 and the net operating income was $324,177.

In total, the utility requested interim rates designed to generate annual revenues of $16,806,594 for water and $10,270,606 for wastewater, increases of $3,981,192 (31.57%) and $2,997,359 (41.22%), respectively, according to the MFRs. The utility requested final rates designed to generate annual water revenues of $17,998,776 and $10,872,112 for wastewater, increases of $5,064,353

(40.16%) and $3,601,165 (49.53%), respectively, according to the MFRs. The approved test year for determining both interim and final rates is the historical year ended December 31, 1991.

By Order No. PSC-92-0948-FOF-WS, issued September 8, 1992, and as amended by Order No. PSC-92-0948A-FOF-WS, issued October 13, 1992, the Commission approved interim rates designed to generate annual water and wastewater revenues of $16,347,596 and $10,270,606, respectively.

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. Numerous motions for reconsideration were decided by this Commission. 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 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 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., 20 Fla. L. Weekly D838 (Fla. 1st DCA 1995), reh'g denied, 20 Fla. L. Weekly D1518 (1995). A mandate was issued by the First District Court of Appeal on July 13, 1995. SSU has sought discretionary review by the Florida Supreme Court. The Commission has filed a Notice of Joinder and Adoption of SSU's Brief. The mandate is not stayed by SSU's petition for discretionary review. City of Miami v. Arostegui, 616 So. 2d 1117 (Fla. 1st DCA 1993). Accordingly, the purpose of this recommendation is to bring to the Commission's attention all possible options in addressing the First District Court of Appeal's mandate.

On August 28, 1995, a Joint Petition for Implementation of Stand-Alone Water and Wastewater Rates for SSU and for the Immediate Repayment of Illegal Overcharges with Interest was filed by Citrus County, Sugarmill Woods, and Springhill Civic Association (Springhill). The utility, as of this date, has not filed a response to the Joint Petition, but the time for filing any

response has not expired. In their Joint Petition, the intervenors basically request that the Commission do the following:

1) immediately reduce the rates charged pursuant to Order No. PSC-93-0423-FOF-WS to stand-alone rates;

2) immediately order SSU to make cash refunds to the customers for the difference between stand-alone rates and the uniform rates for the period interim rates were charged, as well as for the period permanent rates were approved; and

3) require SSU to pay interest compounded monthly on all refunds from the date interim rates were first approved to the date the refunds are made.

The Joint Petition was filed as this recommendation was being written. Since the issues raised in the petition are similar to those addressed by Staff in this recommendation, Staff believes that it is appropriate that this petition be considered at this time. As for the utility having sufficient time to respond to the Joint Petition, Staff believes that addressing this matter now does not harm the utility if the Commission allows the parties to address the Commission on this matter at the Agenda Conference. The first request raised in the Joint Petition is addressed in Issue 4. The second request is addressed in Issues 5 and 6. The third request is addressed in Issue 6. Staff has identified the issue of whether the Joint Petition should be granted as the last issue.

DISCUSSION OF ISSUES

ISSUE 1: Should parties be allowed to participate in this proceeding?

RECOMMENDATION: Yes. Participation should be limited to fifteen minutes for each side. (JABER)

STAFF ANALYSIS: Typically, recommendations which concern the appropriate actions the Commission should take on an order remanded by the Court have been noticed as "Parties May Not Participate," the rationale being that this is still a post-hearing decision, and participation should be limited to Commissioners and Staff. However, in a recent case remanded by the Court, Docket No. 920188-TL, In re: Application for a rate increase by GTE Florida, Inc., (hereinafter referred to as "GTE"), the Commission heard oral argument from the parties, and permitted the filing of briefs.

SSU has filed a new rate case, which is being processed under Docket No. 950495-WS. The official filing date has been established as August 2, 1995. Within sixty days of that date, the Commission must rule on the utility's interim rate request. It has become necessary to immediately decide the issues herein so that the appropriate rate structure will be used for the purpose of calculating interim rates in Docket No. 950495-WS. As a result of these time constraints, the Commission cannot allow parties time to file briefs and have oral argument. Therefore, Staff recommends that in lieu of filing briefs, parties should be allowed to address the Commission, with fifteen minutes allocated for each side.

ISSUE 2: In light of the decision and mandate of the First District Court of Appeal, can the Commission reopen the record and take evidence on whether SSU's facilities and land are functionally related?

PRIMARY RECOMMENDATION: No. In the absence of directions from the appellate court for the Commission to make an additional finding or to reconsider its decision in light of the court's decision, the Commission should not reopen the proceedings to take additional evidence. (MOORE)

ALTERNATIVE RECOMMENDATION: The Commission may reopen the record for the sole purpose of taking evidence on whether or not SSU's facilities and land were functionally related during the test year in Docket No. 920199-WS. (JABER)

PRIMARY STAFF ANALYSIS: In its opinion, the First District Court of Appeals (First DCA) reversed the portion of Order No. PSC-93-0423-FOF-WS, issued March 22, 1993, in Docket No. 920199-WS ("Final Order"), which set uniform statewide rates, on the ground that the Commission exceeded its statutory authority by approving uniform rates for SSU based on the evidence produced. The court found that Chapter 367, Florida Statutes, requires the Commission to find that a "combination of functionally related facilities and land" constitutes one system in order for the Commission to lawfully approve uniform rates. The court concluded that the Commission made no such finding here, nor could it have done so, given the absence of evidence that the utility systems were operationally integrated, or functionally related, in any way other than in fiscal management. Because the court reversed on this ground, it declined to address certain other issues which were argued on appeal by Citrus County and COVA in opposition to the Commission's decision to set uniform statewide rates.

The First DCA gave no directions to the Commission to reconsider its final order, to conduct a new hearing, or to make additional findings. The court merely remanded the cause for "disposition consistent herewith." Although the mandate that followed stated that the cause was remanded for further proceedings consistent with the law, according to the clerk of the court's office, the mandate itself is essentially a standard form, and parties must look to the court's opinion to guide their future action. Thus, the words of the mandate do not have separate significance. This conclusion is supported by the number of cases that interpret the lower tribunal's authority on remand in light of the terms of remand used by the courts in their opinions and not the mandate. There is also one case, discussed later, that refers to the "standard language" of the mandate commanding that "further

proceedings be had in accordance with said opinion, the rule of this Court and the laws of the State of Florida." State, Dept. of Revenue v. Air Jamaica Ltd., 522 So. 2d 446, 448 (Fla. 1st DCA 1988).

The remand direction "for disposition consistent herewith," with no other instruction, has been construed in one appellate case. In Pinellas County Water and Navigation Control Authority v. Zabel, 179 So. 2d 370 (Fla. 2nd DCA 1965), the court interpreted the authority of a trial court when the Supreme Court had remanded a case for "disposition consistent herewith." In the original appeal, the Supreme Court, in Zabel v. Pinellas Co. Water 171 So. 2d 376 (Fla. 1965), concluded that the wrong parties had been required to carry the burden of proof and that the evidence presented failed to meet the standard of proof contemplated by the statute. Similar to the SSU appeal, the Court also found that the hearing examiner did not make a required finding (that a fill permit would adversely affect the public interest), and that he could not have made it on that record. Thus, the Supreme Court quashed the lower court's decision and remanded the cause "for disposition consistent herewith."

On remand, the trial court entered an order directing issuance of the fill permit. The losing party challenged the trial court's refusal to conduct further proceedings and rehear the case, which would have allowed it to present the evidence and allowed the hearing examiner to make the required finding. On the second appeal, the Second DCA concluded that the trial court complied with the mandate and its order was consistent with the opinion and judgment of the Supreme Court. The DCA cited to Mercantile Investment & Holding Co. v. Tedder, 8 So. 2d 470 (Fla. 1942), where despite having directed further proceedings not inconsistent with the opinion, the appellate court, on petition, prohibited the trial court from conducting a further proceeding except to enter a judgment for the petitioner/defendant. In the first appeal, the Court had found the evidence insufficient to sustain a verdict for the plaintiff.

These cases, and others, suggest that when the appellate court finds the evidence insufficient to support a lower court's decision and remands the case without more, the lower court may not reopen the record and take additional evidence. E.g., Broward County v. Coe, 376 So. 2d 1222 (Fla. 4th DCA 1979). In that case, the Fourth DCA determined that the lower court had complied with a Fourth DCA remand "for further proceedings in accordance with this opinion," by declining to take further evidence on an issue involving good faith. On remand, the trial judge ordered a plan of rebate of certain taxes which the appellate court had determined were

illegally collected. Id. at 1223.

The Fourth DCA found that the trial judge "correctly concluded that the [Fourth DCA's] prior opinion [and mandate] neither contemplated nor authorized a second evidentiary hearing." Id. Although in its prior decision the Fourth DCA found that there was no evidence on the "good faith" issue, the appellants had the opportunity to present evidence on that issue at the first evidentiary hearing. By requesting that the trial court take further evidence on the issue, the appellants effectively sought "two bites at the apple." Id. And "[s]omewhere the curtain must ring down on litigation." Id. Although it had remanded for further proceedings, the Fourth DCA evidently intended its remand to be for disposition consistent with its opinion. In the SSU case, it is possible that the court would not view an additional evidentiary proceeding as an impermissible "second bite" because the functional relatedness of the utility's facilities was not raised as an issue. However, the Commission's practice has been not to conduct further evidentiary proceedings unless more specifically directed to by the court or unless the Commission is unable to otherwise make a decision.

For example, in the recent GTE rate case opinion, the Supreme Court articulated a new standard for determining whether costs for transactions between the utility and its affiliates are fair and found that the evidence in the record did not satisfy that standard. In its order on remand, the Commission stated that its general practice is not to conduct further evidentiary proceedings on remand unless the record is insufficient or incomplete and declined to conduct such a proceeding. Order No. PSC-95-0512-FOF-TL, issued April 26, 1995.

This practice is consistent with cases where the appellate court has excluded evidence so that there is insufficient evidence for the trial court to render any decision at all. Additional evidence has been permitted in these cases. See, St. Joe Paper Company v. Adkinson, 413 So. 2d 107 (Fla. 1st DCA 1982), where the appellate court had excluded certain testimony and remanded the case to the trial court for further proceedings consistent with its decision, the trial court could reopen the record and take additional evidence as to one issue where it would be unable otherwise to render a decision on that issue. However, the trial court could not take additional evidence on the other issue for which it had sufficient evidence to render a decision. Here, the record may be sufficient for the Commission to decide a rate structure for the utility, albeit not the rate structure it previously chose.

There is one case that attaches significance to the language of the mandate. In State, Dept. of Revenue v. Air Jamaica Limited, 522 So. 2d 446 (Fla. 1st DCA 1988), the Department of Revenue, after prevailing in an appeal of a tax issue, filed a motion in the trial court to enforce the Supreme Court's mandate and asked for statutory interest on the unpaid tax. On appeal by the state after the trial court denied its motion, the airlines argued that the Supreme Court's decision didn't mention interest, nor did it remand the cause for consistent proceedings, so the trial court did not have jurisdiction to entertain the issue.

The First DCA disagreed, saying that the Supreme Court simply reversed a decision granting a tax exemption, and the mandate contained "standard language commanding 'that further proceedings be had in accordance with said opinion, the rule of this Court and the laws of the State of Florida.'" Id. at 448. That language gave the court sufficient discretion to consider the issue of statutory interest. This case differs from the SSU decision in that the Supreme Court in the tax case did not find a lack of evidence to support a finding regarding interest, never raised it as an issue, and in fact, never discussed it. Moreover, the state had a separate, statutory right to interest.

Typically, in a case where the reviewing court intends for the lower court to take additional evidence, it will at least remand the cause for further proceedings and also instruct the lower tribunal to reconsider its decision or to make additional findings. In Tampa Electric Co. v. Crosby, 168 So. 2d 70 (Fla. 1964), the Court stated the general proposition that when a cause is remanded with directions to make adequate findings, further hearing may or may not be had as the circumstances require. Id. at 73. The Court also stated that a reviewing court that remands for further consideration should announce any restrictions on further testimony and that without such a restriction, the trier of fact has the discretion to receive additional evidence.

Arguably, because the functional relationship finding is one the Commission didn't know it had to make (a required finding announced by the First DCA in this case), the Commission could take additional evidence and reconsider its decision in light of it. It is unlikely the First DCA would be persuaded by such an argument. The court did not direct the Commission to make additional findings nor did it remand the case for further consideration. Apparently, the court viewed a finding that the utility's systems are functionally related--that SSU is essentially a single system--as a fundamental, threshold issue. The court also recognized it, from the Board v. Beard appeal, as a finding the Commission had made in the past in another case. In that case, the Commission decided, in

the context of a jurisdictional determination, that several systems were a system as defined in section 367.021(11), Florida Statutes. Board of County Commissioners v. Beard, 601 So. 2d 590 (Fla. 1st DCA 1992). Thus, the court might find the Commission should have known that it must make the functional relationship finding before it may treat SSU as a single system for ratesetting purposes, in which case the court might view additional evidentiary proceedings in the same docket as impermissible. In addition, the court, in denying rehearing, implicitly rejected arguments made by SSU and the Commission that this was a new issue that the court should grant argument on, or that a finding of functional relatedness is necessary only in a jurisdictional determination.

If the Commission were to take additional evidence and make the finding that SSU's facilities and land were functionally related, and if the court decided on appeal that it was permissible for the Commission to do that, the court would then be faced with addressing the other issues raised in the initial appeal. While it is arguable that the court did not make the finding that the testimony about the benefits of uniform rates was not competent or substantial enough evidence to support the rate structure decision (as opposed to not being sufficient to support a finding of functional relationship), the court did recite the testimony of three witnesses that SSU was not in a position to fairly implement uniform rates, and it did find that the Commissioners' beliefs about the benefits of uniform rates were insufficient to support the final order. Thus, it appears that the court might reverse the order on other grounds. The result would simply be to delay final resolution of this case.

Retroactive Ratemaking

If the Commission sets rates based on the evidence of record, the new rates should be effective from the date revised tariffs are approved. To do otherwise would constitute retroactive ratemaking. The court found the uniform rates implemented by the Commission had not been lawfully approved. Therefore, the rates were invalid from the issuance of the final rate order.

To apply new rates back to the beginning of the case would be an impermissible attempt to set rates to be effective in the past. The Commission cannot arbitrarily go back and adjust rates to the beginning of rate case or any other point in the past. New rates are "prospective as of the date they are fixed." City of Miami v. Florida Public Service Commission, 208 So. 2d 249, 260 (Fla. 1968). Retroactive ratemaking basically involves an attempt to set rates on a going-forward basis to recoup past losses or to refund past over-earnings. Citizens v. Florida Public Service Commission, 448

So. 2d 1024 (Fla. 1984). Stated another way it results when "new rates are applied to prior consumption" which occurred before the effective date of the new rates. Gulf Power Co. v. Cresse, 410 So. 2d 492 (Fla. 1982). The fact that the approved rates are found invalid by a court does not allow the institution of new rates retroactively to cover the prior period back to the issuance of the unlawful order. New England Telephone and Telegraph Company v. Rhode Island Public Utilities Commission, 358 A. 2d 1 (R.I. 1976). Cf. the Commission's action in the Sunshine Utilities and GTE remands, where certain expenses were disallowed by the Commission but upheld in the court's opinion. The Commission set new rates on a going-forward basis only, not for the period back to the beginning of the case, during which time the improper disallowance of affiliate expenses was in effect. Orders Nos. PSC-94-0738-FOF-WU and PSC-95-0512-FOF-TL.

ALTERNATIVE STAFF ANALYSIS: As stated earlier, the portion of Order No. PSC-93-0423-FOF-WS approving increased rates and charges based upon a uniform rate structure for SSU was reversed by the First District Court of Appeal and a mandate has been issued. The Court directed that the cause be "remanded for disposition consistent herewith." In reversing the Commission's decision, the Court stated that "[t]he Commission's order must be reversed based on our finding that chapter 367, Florida Statutes, did not give the Commission authority to approve uniform statewide rates for these utility systems which are operationally unrelated in their delivery of utility service." 20 Fla. L. Weekly D839.

The Court's opinion has raised many questions, including: 1) did the Court reverse the Commission's order on any other ground than that of failure to make a finding that SSU's facilities and lands were functionally related; 2) in the context of this opinion, how should "disposition" be interpreted; 3) is the Court's opinion a general or specific mandate; 4) will further proceedings give parties a "second bite at the apple"; and 5) if the Commission chooses to reopen the record, would that violate the prohibition against retroactive ratemaking. This recommendation addresses these points separately below strictly from a legal point of view. Even though this recommendation supports the notion that the record can be reopened for a very limited purpose (making the required finding as suggested by the Court), it is important to note here that the Commission also has the discretion to decide not to reopen the record even though the Commission recognizes its ability to do so. This point will be addressed further in the next issue.

The Court's Finding

The Court states that "[h]ere, we find no competent substantial evidence that the facilities and land comprising the 127 SSU systems are functionally related in a way permitting the PSC to require that the customers of all systems pay identical rates." Id. at D838. On the same page, the Court goes on to state that "[n]o such finding was made here, and could not properly be made given the apparent absence of evidence that the systems were operationally integrated, or functionally related, in any aspect of utility service delivery other than fiscal management." Id. The Court holds that "[u]ntil the Commission finds that the facilities and land owned by SSU and used to provide its customers with water and wastewater services are functionally related as required by the statute, uniform rates may not lawfully be approved." Id. at D839.

Arguably, there are two alternative views to the Court's opinion: 1) that the Court disapproved of the uniform rate concept in its entirety in addition to finding that the Commission did not make the perceived requisite finding pursuant to Section 367.171, Florida Statutes; or 2) that the Court only determined that the record did not contain competent substantial evidence that the utility's facilities and land were functionally related. This recommendation supports the second view. Although the Court does discuss some of the evidence that is in the record on uniform rates, when one reads the findings made by the Court, the conclusion should be that the Court based its decision on its belief that the Commission failed to make an evidentiary finding related to Section 367.171, Florida Statutes.

Meaning of "Disposition"

Black's Law Dictionary states that the "disposition" of a matter involves the act of finally exercising one's power or control over the matter, or "to alienate, relinquish, part with, or get rid of; to put out of the way; to finish with" the matter. As an example, Black's uses the word "disposition" in the context of a criminal proceeding, where a "disposition" hearing is a judicial proceeding in which a criminal defendant is sentenced or otherwise disposed of. In a proceeding involving ratemaking, this definition of "disposition" is not appropriate in Staff's opinion. In numerous places throughout the Court's opinion, the Court makes reference to "until the Commission finds..." or "the apparent absence" of the finding. Staff believes that in this instance, the appropriate interpretation of "disposition" does include the option of reopening the record to attempt to make the requisite finding. Consistent with the definition in Black's, once the Commission makes the evidentiary finding here, this matter will be "finished."

Staff has researched for cases interpreting the word "disposition" and no cases directly on point have been found. However, the primary staff analysis cites to Pinellas County Water and Navigation Control Authority v. Zabel, 179 So. 2d 370 (Fla. 2nd DCA 1965), for the proposition that the Court rejected the notion that a lower tribunal should have further proceedings or a rehearing in a case where the remand was for "disposition consistent herewith", which was the same language used by the First District Court of Appeal in the SSU case. This staff believes that this case can and should be distinguished from the instant case.

First, the Zabel Court recognized that the evidence in the record failed to meet the standard of proof required by the statute which governed that particular issue. The mandate issued in the Zabel case appears to be a specific mandate (the Court appears to have given specific directions to the parties, which would not have allowed a further proceeding). This is not the set of circumstances we have here. In the record made in Docket No. 920199-WS, there is absolutely no evidence on whether or not the utility's facilities and land were functionally related. By its own recognition, the Zabel Court chose not to elaborate, but staff believes that the Court rejected the notion of further proceedings because the parties had an opportunity in the first hearing to present evidence which would meet the standard of proof required by the statute (their first bite at the apple). In the SSU case, the Court has identified a standard for the Commission to follow prior to the implementation of uniform rates that no party could have been aware of and no party ever presented evidence on. Contrary to the suggestion in the primary recommendation, neither Staff nor the Commission could have known such a finding was necessary.

Second, unlike the Zabel opinion, the SSU mandate is a general mandate. There is absolutely nothing in the Zabel opinion that would have warranted the trial court having further proceedings. The Court was very specific in finding that the wrong parties had been required to carry the burden of proof. On the other hand, the Court deciding the SSU case makes numerous references to the need for an additional evidentiary finding on "functional relationship" and has not explicitly restricted this Commission from having an evidentiary proceeding on the Court's perceived deficiency. For the same reasons, it is incorrect to rely on State ex rel. Mercantile Investment & Holding Co. v. Tedder, 8 So. 2d 470 (Fla. 1942), where the Court specifically remanded with directions for "further proceedings not inconsistent with its opinion." The Court's opinion amounted to a direction to enter a judgment for the defendant.

Commission's Discretion in Method of Complying With Mandate

It is well settled that if an opinion is reversed with general directions for further proceedings, a trial judge is vested with broad discretion in handling or directing the course of the case. Tampa Electric v. Crosby, 168 So. 2d 70 (Fla. 1964); Lucom v. Potter, 131 So. 2d 724 (Fla. 1961); Veiner v. Veiner, 459 So. 2d 381 (Fla. 3d DCA 1984), review denied, 469 So. 2d 750 (Fla. 1985); City of Pensacola v. Capital Realty Holding Co., 417 So. 2d 687 (Fla. 1st DCA 1982). Even though the mandate does use the words "further proceedings," the opinion does not; and Staff is in agreement that the language in the opinion takes precedent over the language in the mandate. Notwithstanding, Staff believes that the ultimate finding in the opinion does, in fact, result in general directions for the "disposition" of the case.

In Smith v. Smith, 118 So. 2d 204, 205 (Fla. 1960), the Court held that:

> When a final decree in a chancery cause is reversed without specific directions to enter a particular decree or order, the effect of the reversal is to remand the cause to the lower court for the entry of a further decree consistent with the ruling of this Court. This is even more clearly the rule when, as in the instant case, our judgment reverses the final decree and specifically remands the cause 'for further proceedings consistent with' our opinion. In either event, the trial judge, upon the filing of our mandate, has the authority to take such further proceedings in the cause as may be appropriate in order to arrive at another decree which will accord with the mandate of this Court (emphasis added).

The primary staff analysis makes reference to a statement made in the GTE order, Order No. PSC-95-0512-FOF-TL, issued April 26, 1995. In that order, the Commission did not find it appropriate to reopen the record to take further evidence, and stated that: "Given the Commission's general practice of not conducting further evidentiary proceedings on remand unless the record is insufficient or incomplete, we believe no further hearing...is appropriate." That situation can be distinguished. First, this Staff agrees that the Commission should not reopen the record if the Court finds that the record already presented is insufficient. This is not the situation we have here. In this instance, even the Court has

recognized that there was no evidence on the issue of functional relatedness pursuant to Section 367.171, Florida Statutes. Reopening the record in GTE would have resulted in a second bite of the apple. Reopening the record in this case for a very limited purpose as the Court has suggested cannot be a second bite of the apple if the issue was never even identified or litigated.

Second Bite of the Apple

Case law supports the proposition that an evidentiary hearing may be had after remand if that evidentiary hearing does not afford parties a "second bite of the apple." The test appears to be "did the parties have the opportunity to present the evidence at the first hearing?" See Broward County v. Coe, 376 So. 2d 1222. The primary recommendation also cites to this case, but a different conclusion is reached. In Coe, the Court held that where tax officials **had the opportunity** to present evidence on the issue of good faith at the first evidentiary hearing, the trial court did not err by not authorizing a second evidentiary hearing on the issue of good faith. Id. at 1222. The "opportunity to present evidence" is the appropriate distinction here. During the time Docket No. 920199-WS was processed, the Commission clearly had jurisdiction over SSU's 127 service areas. No one identified "functional relationship" as found in Section 367.171, Florida Statutes, as an issue; and its relevance or its application to SSU was never litigated.

Retroactive Ratemaking

Retroactive ratemaking only occurs when new rates are applied to prior consumption. See Gulf Power Co. v. Cresse, 410 So. 2d 492 (Fla. 1982); Citizens v. PSC, 448 So. 2d 1024, 1027 (Fla. 1984). If the Commission chooses to reopen the record to make a finding on whether SSU's facilities and land were functionally related, and finds that they are functionally related, there is a potential issue regarding whether the decision to allow the utility to keep the uniform rate structure in place constitutes retroactive ratemaking. This Staff believes it does not. It is well settled that ratemaking should be prospective in nature. There is no dispute in that regard. Assuming that SSU can prove a functional relationship existed during the test year used in Docket 920199-WS and forward, everything should remain the same. There would not be a change in rates nor in rate structure. Furthermore, the utility's revenue requirement was never raised as a point on appeal and cannot be changed. The Commission would be applying the same rate to the same rate structure to achieve the same revenue requirement. Therefore, it is Staff's position that allowing the utility to keep the uniform rate structure in place if the

Commission makes a finding that the utility's facilities and lands are functionally related, cannot be interpreted as retroactive ratemaking.

Finally, the common sense approach to the retroactive ratemaking argument is that the effect of the remand is not to consider this a new proceeding or a new rate application. In the Court's view, the Commission erred by not making the evidentiary finding on functional relationship. This part of this proceeding is intended to correct the Commission's error.

Summary

As stated earlier, Staff believes that the Court did not place any restrictions on the Commission in the opinion or in the mandate. Some courts have held that the restriction on further testimony should be announced in the judgment. See, for example, Tampa Electric Co. v. Crosby, 168 So. 2d at 73. (Fla. 1964). That holding appears to suggest that if the Court wanted to restrict the Commission from reopening the record, it would have done so. No one really knows at this point if SSU's facilities and land were functionally related. However, it does appear as though the Commission can give the utility and the parties the opportunity to present evidence on the limited issues related to whether SSU's facilities and land were functionally related.

ISSUE 3: If the Commission approves the alternative recommendation in Issue 2, should the Commission reopen the record?

RECOMMENDATION: Yes, the Commission should reopen the record. A hearing should be immediately scheduled. SSU should have 20 days from the Agenda Conference to file testimony on only the issues identified in the staff analysis below. Parties should be allowed 14 days from the date the utility files its testimony to file their testimony on these issues. All other dates should be established later by the Prehearing Officer in a future order on procedure governing this proceeding. If the record is reopened, then the rates currently being charged should remain in effect pending the conclusion of the administrative hearing. (Jaber, Chase)

STAFF ANALYSIS: In the alternative recommendation in Issue 2, the staff recommends that the Commission can reopen the record. That recommendation is based on legal analysis. After that determination is made, the question then remains should the Commission reopen the record.

There are many considerations to this issue, the most important of which is that the Commission must do what it thinks is the right thing to do. The Commission, in Order No. PSC-93-0423-FOF-WS, based on the evidence in the record, decided that the uniform rate structure was the appropriate rate structure for this utility. The standard set forth by the Court was never an issue in this docket. The Commission has not had the opportunity to make a finding on whether or not SSU was "functionally related" during the test year used in Docket No. 920199-WS. Therefore, the record in this docket is not complete, and the Commission should afford parties the opportunity now to complete the record. There is absolutely nothing in the Court's opinion which appears to specifically prohibit the Commission from reopening the record on the sole issue of functional relationship. Staff's analysis of the considerations the Commission must make is set forth below.

The Court's Opinion

There is a concern that the opinion suggests that even if the Commission reopens the record and makes a finding that SSU's facilities were functionally related, that decision will be appealed, and the order may not be upheld. Staff believes that the Commission should make its present decision on the circumstances that exist now. Those circumstances are that the Court did not make a finding on whether or not the Commission's decision to implement uniform rates was supported by the record. The Court makes reference to a few lines of testimony which suggests that the record does not support the implementation of uniform rates in this

docket. The Court appeared concerned about the timing of the implementation of that rate structure, and not about the actual rate structure. As stated earlier in Issue 2, the Court only states that "until the Commission finds that the facilities and land owned by SSU . . . are functionally related as required by the statute, uniform rates may not lawfully be approved." If the Court meant that uniform rates were not appropriate, the Court would not have made the above statement. The Court has only indicated that an additional finding must be made before uniform rates can be approved.

As for the testimony in the case regarding the uniform rate structure, the record is replete with cites that describe the benefits to the customers and to the utility of moving towards uniformity in rate structure. These benefits include recognizing the economies of scale that a large multi-system company can bring to its customers (TR 1046, 1060, 1072-3, 1120, 2052), helping prevent rate shock to all customers as capital investment is made in the future (TR 1046, 1072, 1120, 2052), allowing the utility to recover investment from small undeveloped systems it is required to serve without implementing rates that might discourage growth or cause disconnection (TR 1046), and providing customers with longer rate stability (TR 1120). The record also indicates that these types of benefits have already been acknowledged by the Commission in the electric, natural gas and communication industries. (TR 1120)

Finally, witness Williams discussed a rate structure by which all water and wastewater plants could be combined to calculate a company wide revenue requirement and rates. He stated that it has been Commission policy in the past to consolidate water and wastewater service areas operated by one company for ratemaking purposes, and provided Jacksonville Suburban Utilities Corporation as an example. This utility operates facilities in Duval, Nassau and St. Johns Counties under one rate structure and has uniform rates for all of its service areas, going back to the 1970's. Marion Utilities, Sunshine Utilities and Utilities, Inc. of Florida are other examples of uniform rates among several plants. (TR 2052)

Witness Williams identified several benefits of uniform rates. He stated that "the rates are simply derived, easily understood and economically implemented. Averaging rates also recognizes the economies of scale that a large multi-system company can bring to its customers. At any time during the life of a plant, major capital improvements may be required as a result of plant upgrades, expansion, or regulatory requirements. Statewide rates would allow unusually high plant costs and operating expenses to be spread over

more customers to mitigate rate shock." (TR 2052)

Witness Cresse discussed the possibility of uniform rates at numerous points in his testimony. He agreed that if the Commission were to consider the appropriate level of long run rate aggregation, a statewide rate would be the broadest possible alternative. (TR 1129) He also discussed the fact that the Commission has established some uniform rates for other utilities regardless of whether they were in the same county, with different plants. (TR 1130) When questioned about the appropriateness of creating a "cross subsidy" among customers, witness Cresse responded that he did not believe that "cross subsidy" was the appropriate term to describe the revenue flows. He explained that he believes that term is only appropriate between competitive and noncompetitive services, that there is no such thing as 100% parity for each class of customers receiving service from a utility for every service they receive, and that these types of decisions are made regularly by the Commission with regard to all the utilities they regulate. Finally he added that he believed the appropriate context for evaluating any request would be as a rate design adjustment. (TR 1077, 1089-91)

Fairness

The primary recommendation in Issue 2 suggests that reopening the record is really allowing parties to have a second bite at the apple. From some customers' perspective, reopening the record to allow parties the opportunity to present evidence on whether or not SSU's facilities and land were functionally related during the test year will be interpreted as letting the utility have one more chance at implementing uniform rates, thus the appearance of a second bite. It is important to note, however, that parties never litigated in Docket No. 920199-WS what the court has determined is the "threshold issue". The Commission's basic authority for setting rates stems from Sections 367.011 and 367.081, Florida Statutes. The court's decision has added a new standard for the approval of uniform rates.

From the utility's perspective, this new standard was not apparent to it and it at least should have the opportunity to present whatever evidence exists on the issue. The Commission cannot anticipate what the finding will be with respect to whether SSU's facilities and land were functionally related during the test year. Allowing the utility the opportunity to present evidence on that issue does not harm the other parties because all of the parties involved in this docket will have the same opportunity.

In focusing on the entire issue of fairness, Staff believes that it is important to remember that there are both "winners and losers" with the uniform rate structure and basing a decision on the impact of only a portion of the utility's customer base is improper. From a policy standpoint, the Commission must base its decisions after considering the impact on all customers and on the utility.

The Commission should be aware that it could be setting a precedent if it decides not to reopen the record based on an anticipation of an outcome of a possible future appeal. This case is not the only nor the most controversial case the Commission will have before it that may result in an appeal. The crux of the policy decision, as stated earlier, is that the Commission has to do what it believes is right. The Commission is a ratemaking authority which, by statute, is obligated to set fair, just, and reasonable rates. The Commission must fulfill those obligations without anticipating rejection by the Court.

Based on the foregoing, Staff believes that the Commission should reopen the record. A hearing should be immediately scheduled. SSU should have 20 days from the date of the Agenda Conference to file testimony on the following issues:

1) Were SSU's facilities and land functionally related during the test year in Docket No. 920199-WS and up to the present; and

2) If so, does the combination of functionally related facilities and land constitute a single system as defined under Section 367.021(11), Florida Statutes.

Parties should be allowed 14 days from the date the utility files its testimony to file their testimony on these issues. All other dates should be established later by the Prehearing Officer in a future order on procedure governing this proceeding.

If the Commission approves Staff's recommendation to reopen the record in this docket, then the rates currently being charged should remain in effect pending the conclusion of the administrative hearing. If the evidence presented at the hearing does not indicate that SSU's facilities and land were functionally related during the test year, the Commission should, at that point, make a decision on the appropriate rate structure on a prospective basis.

ISSUE 4: If the Commission approves the primary recommendation in Issue 2, what are the appropriate rates for Southern States Utilities, Inc.?

RECOMMENDATION: If the Commission approves the primary recommendation in Issue 2, SSU's final rates should be calculated based on a modified individual system basis, with the exception of Welaka and Sarasota Harbor, Silver Lake Estates and Western Shores, Park Manor and Interlachen Lakes, and Rosemont and Rolling Green which are combined for water ratemaking purposes. All other existing uniform rates should be unbundled. The rates should be developed based on a water benchmark of $30.00 and a wastewater benchmark of $46.75 for a total bill of $76.75. These benchmarks should be calculated at 10,000 gallons of water usage. Revenue deficiencies caused by the Staff recommended benchmark should be recovered from each industry's customers. The recommended rates, before any adjustments for subsequent indexes and pass-throughs, are shown on Attachment A, which contains Schedules Nos. 1 & 2. Since this decision was rendered SSU has had two indexes and one pass-through approved by the Commission for the 127 service areas. Therefore SSU should make any necessary adjustments for indexes and pass-throughs and be required to recalculate and submit the recommended rates within 7 calendar days of the Agenda Conference. SSU should also be required to file the supporting documentation, as well as, a computer disc in a format which may be converted to Lotus 1-2-3 by Staff. The utility should be required to file revised tariff sheets and proposed customer notice to reflect the appropriate rates. The approved rates should be effective for service rendered on or after the stamped approval date on the tariff sheets pursuant to Rule 25-30.475(1), Florida Administrative Code, provided the customers have received notice. The rates may not be implemented until proper notice has been received by the customers. The utility should provide proof of the date notice was given within 10 days after the date of notice. (WILLIS, RENDELL)

STAFF ANALYSIS: As pointed out in Issue 2, the utility's revenue requirement was never raised as a point on appeal and cannot be changed; therefore, the recommended rates should be designed to produce total annual operating revenues for all 127 systems of $15,828,704 for water and $10,179,468 for wastewater. This results in a net increase of $3,325,992 (26.60%) for water and $3,323,530 (48.48%) for wastewater. If the Commission approves the primary recommendation in Issue 2, it is Staff's recommendation that SSU's final rates be calculated using a modified stand alone rate structure as described below. These rates, before any adjustments for subsequent indexes and pass-throughs, are shown on Attachment A, which contains Schedules Nos. 1 & 2.

RECOMMENDED RATE STRUCTURE

Staff recommends that a modified stand-alone rate structure is a reasonable rate structure supported by the record in Docket No. 920199-WS. This rate structure maintains the basic financial integrity of each service area as expressed in rates, while at the same time, recognizing that the utility has consolidated various administrative operations to achieve efficiencies. It also addresses the issues of conservation, rate continuity and rate shock protection.

In the original filing in this docket, the utility requested rates developed on a modified stand alone basis. In its recommendation on final rates, Staff offered a variation of the utility's proposal as an alternative rate structure. It is this alternative that Staff is recommending be implemented if the uniform rate structure is eliminated. Following is a brief description of the utility's proposal and Staff's recommended changes to it.

Under the utility's proposal, individual system revenue requirements were calculated as the starting point in developing rates. The utility's rate structure would implement dollar caps on the water and wastewater bills, assuming the usage of 10,000 gallons of water. This target for water was $52 and $65 for wastewater. These proposed dollar levels are actually target benchmarks, rather than caps because if a customer used more than 10,000 gallons he would still be billed for all water used. (TR 1045) SSU also factored a wastewater gallonage cap of 10,000 gallons into the equation. SSU premised their benchmark on the assumption that if a customer used 10,000 gallons of water, his combined bill would be no more than $117.

Staff agrees with utility witness Ludsen's arguments for evaluating each system separately to develop a base starting point. (TR 845) Staff believes that this process should start at the beginning, which is evaluating each system's revenue requirements and rates on a strict stand alone basis. That becomes the foundation for any other decisions and/or combinations and provides a consistent point of reference. In the Staff's revenue requirement analysis, each system was evaluated on a stand alone basis.

Another part of the utility's rate proposal was the utility unbundle the rates of those service areas that had uniform rates at the time this case was filed. These rates were those in effect for the counties of Lake, Marion, Putnam and Seminole. Witness Ludsen testified that this unbundling was believed to be appropriate for

a couple of reasons. One reason was that many of the systems had never had a rate case before the Commission since they were acquired by SSU and had maintained their existing rates at that time. Also, many systems never had a consistent rate methodology adopted because the rates were grandfathered when they were acquired by SSU. Another reason was that the basic philosophy of this filing was to "get the pot right" on a going forward basis. In order to do that, utility Witness Ludsen believed it was appropriate to disaggregate combined systems to create a standard starting point. (TR 845)

Utility witness Cresse repeatedly emphasized that the utility's preference was for the modified stand-alone rates proposed in the MFRs. (TR 1045, 1048) Witness Williams stated his preference for the utility's proposal, but with different caps. (TR 2054)

Every rule has an exception, and this case is no different. Four pairs of service areas in this case are physically interconnected in the provision of service and should be combined for ratemaking purposes. These include Welaka and Sarasota Harbor, Silver Lake Estates and Western Shores, Park Manor and Interlachen Lakes, and Rosemont and Rolling Green. (TR 1741)

Target Benchmarks

As mentioned above, under the utility's proposal, the proposed benchmarks on customers' bills at 10,000 gallons would be $52.00 for water and $65.00 for wastewater, resulting in a maximum combined bill for water and wastewater service of $117.00. In discussing the utility's targeted benchmark, witness Cresse agreed that some other level of "caps" could generate equally appropriate rates. (TR 1128) Under Staff's proposal, the target benchmarks at 10,000 gallons of water usage would be lowered to $30.00 and $46.75, for water and wastewater respectively. Further, the Utility's plan recovers deficiencies from its proposed benchmarks from both water and wastewater customers through an across the board increase over stand-alone cost rates. Staff's recommendation differs from the utility's proposal in that there is no cross subsidization between water and wastewater systems. Since the revenue requirements were developed initially on a stand alone basis, deficiencies are within each industry, not across each industry. Staff decided to distribute the wastewater deficit back through the gallonage charge, which results in an additional $.25 to all wastewater gallonage charges.

This approach to recovering revenue deficiencies is consistent with prior Commission decisions. And, as witness Cresse stated,

the Commission has the discretion to develop rates that are fair, just and reasonable, which include a return on the revenue requirements of all 127 systems. (TR 1108-9) Therefore, Staff recommends that revenue deficiencies generated under Staff's proposed benchmarks be recovered as discussed above.

Water Rate Guidelines

The establishment of these rate benchmarks required Staff to develop additional guidelines or parameters in developing the actual rates. The first guideline for water and wastewater was that existing rates would not be reduced, following the principle of rate continuity. Other guidelines for water rates included the following: (1) The water gallonage charge would be established at a minimum of $1.00, but no more than $2.00. Staff believes this will not only provide rate continuity but also promote conservation. (2) The water base facility charge should be no less than $4.00 and no more than $10.00. To achieve the $30.00 cap bill at 10,000 gallons of water usage, a system with a $10.00 base facility charge must have a gallonage charge of $2.00 (hence the $2.00 maximum on the gallonage charge mentioned earlier).

Having specified these goals, we encountered two exceptions for water to the first goal of not reducing existing rates. These involve the systems of Amelia Island and Westmont. During the process of calculating rates, it was discovered that the private fire protection rates for Amelia Island were higher than the past Commission practice of 1/3 the base facility charge. Therefore, the base or current rates were overstated. In order to rectify this on a going forward basis, the revenue requirement was adjusted to calculate the correct rates, which are lower than the present rates.

Westmont's situation is different in that in trying to meet the first objective of not reducing existing rates, maintaining the present rates created an overearnings situation. In addition, the ratio of the base facility charge to the gallonage charge appeared to be incorrect. The stand-alone rates for that particular system were actually more appropriate and still within our guidelines of a maximum base charge of $10.00 and gallonage charge of $2.00. Therefore, Staff believed it was more appropriate to let the rates for this system also decrease.

1" Water Meters

In addition to these guidelines, Staff also considered the rate dynamics in those systems that had a significant percentage of the residential customer base receiving service through 1" meters.

These included the service areas of Pine Ridge Utilities and Sugarmill Woods.

Numerous Pine Ridge customers testified that most of the homeowners had 1" meters, many were encouraged by the Utility to install a 1" meter, and that the proposed SSU rates and structure would place an undue burden on them. (TR 653, 662, 670-1, 673) The Utility's proposed rate structure was a move away from the current flat rate to a rate that escalates by the A.W.W.A factors. (TR 662) It was also established that most of the lots were large and would require a 1" meter for irrigation. (TR 650, 654)

As a result of some of the discussion with the homeowners, the Commission requested a late filed exhibit from SSU indicating the percentage of residential customers with 1" meters compared to all residential customers of the Pine Ridge Utilities and Sugar Mill Woods systems. (TR 1838, EXH 126) This exhibit identified 84.8% of Pine Ridge Utilities and 88.9% of Sugarmill Woods residential customers with a 1" meter.

Staff believes that these customers should not be forced to carry an unfair allocation of expenses through their base facility charge on a 1" meter, since the 1" meter rather than the 5/8" x 3/4" meter size was basically the residential standard. Staff applied the principles of rate continuity and judgment in setting these rate levels.

Wastewater Rate Guidelines

The guidelines for determining appropriate wastewater rates to generate the benchmark of $46.75 were simpler. Again, the principle of rate continuity was imposed so that no existing rates would be reduced. The range for the calculation of the base facility charge was between a minimum of $8.00 and a maximum of $12.00. Gallonage charges were then calculated. The deficiency was then spread back over the gallonage charges.

Other Proposed Rate Structures

Other rate structures discussed at varying degrees in the record in this case include rates based on geographic groupings, and true stand alone rates for each service area. Many of the service areas had a base facility charge rate structure based on a stand alone revenue requirement. However, all 127 service areas included in this filing did not have rates based on a true stand-alone basis at the time this case was filed. These included service areas in four counties which were combined for ratemaking purposes, for reasons discussed earlier. These county rates were

those in effect for the counties of Lake, Marion, Putnam and Seminole. The Utility's primary objective with this filing was to establish a consistent base methodology for establishing rates. (TR 844-5)

In the Joint Petition for Implementation of Stand-Alone Water and Wastewater Rates for SSU, discussed in Issue 7, Sugarhill Woods, Citrus County, and Springhill requested that the Commission immediately reduce charges to that of stand-alone. It should be pointed out that this would be a change in the rate structure than what was in place prior to the filing of Docket No. 920199-WS. It should further be pointed out that since the First District Court of Appeal found that while there was insufficient evidence in the record to support the implementation of statewide uniform rates, there is less support in the record to support stand-alone rates. There was no witness in this docket that supported any testimony related to implementing stand-alone rates.

Witness Williams stated that the obvious advantage of true stand alone rates is that each system would pay its true cost of service. On the other hand, there would be tremendous extremes in the final rates of the systems so that some customers would see large increases or decreases from their current rates. Many SSU systems have never operated under stand alone rates. Also, customers in systems in close proximity to one another could have large rate variances depending on the age of the systems, contribution level, and type of treatment. (TR 2051-2)

Both COVA and Citrus County argued for strict stand alone rates. COVA's primary concern revolved around the relationship of service availability charges and monthly rates. COVA members pay substantial service availability charges which has resulted in their particular system (Sugar Mill Woods) having a very low rate base. Consequently, the rates for water and wastewater service are very low. COVA believes that if a modified stand alone rate or statewide uniform rate is approved, their members will have to pay disproportionately higher rates then will be required on a strict stand alone basis. (TR 1058)

Witness Cresse responded to these remarks by clarifying that the proposal submitted by the Utility would not have the effect alleged by COVA. The Utility's proposal is to "cap" the rates and recapture a portion of the resulting revenue deficit from those utilities whose rates are currently in excess of their costs based on their individual cost-of-service study. The remainder would be recovered by an increase in the average customer bill of the rest of the systems. (TR 1058-1059)

Basically, COVA's real issue is whether it is appropriate to consider the Utility's proposal, or any other level of rate aggregation, without reviewing the service availability policies of all the systems. Witness Ludsen briefly addressed this issue when asked why the Utility did not file a service availability case in conjunction with the rate case. He stated that the level of service availability charges was not the main driver in whether the rates are high or low. He also stated that depending on economic growth, it might be eight or ten years before a change in service availability charges might have any real impact on the levels of CIAC for particular systems. (TR 856) It should be mentioned that SSU has filed for a change in its service availability charges in the current filing, Docket No. 950495-WS.

Witness Cresse addressed this concept in more detail during his testimony. He was asked whether it would be appropriate to implement any kind of uniform statewide rates prior to an evaluation of each system's service availability charges. After clarifying that he was not recommending statewide rates, witness Cresse responded that the service availability charges for each system have been determined by the Commission to be appropriate, fair, just and reasonable. Therefore, there was no reason why the Commission could not, on a going forward basis, make changes in rate structure. (TR 1140-2)

Finally, witness Cresse stated, "Nothing you can do in service availability charges is going to change the basic rates that ought to be established in each utility as long as you establish them on an each utility basis." He said that if the Commission considered the Utility's rate proposal, there was such a little deviation from the cost per system that it wouldn't make the current service availability charges wrong. (TR 1142-3)

Citrus County's argument to retain system stand alone rates was based on a legal argument about whether the Commission has the authority to authorize rates based on any level of aggregation, as opposed to the specific rate bases of separate systems. (TR 1108) Witness Cresse responded that the only obligation of the Commission was to set rates that are fair, just and reasonable, as long as they allow a fair rate of return on all 127 systems - not necessarily allowing each separate system to receive a fair rate of return. (TR 1109)

Based on the testimony of Witness Cresse, Staff believes that there is ample support in the record that the Commission has the discretion to implement a change in rate structure as long as the rates set are fair, just, and reasonable. In addition, Staff believes the records supports the argument that the Commission is

not prohibited from examining the merits of the Utility's proposal or any other recommended rate struture without considering service availability charges simultaneously. Therefore, Staff believes that COVA's and Citrus County's objections to the Commission taking action on alternative rate structures should be rejected.

Rate Structure Items Not At Issue

In addition, the following items were either stipulated to by the parties or were not challenged in the subsequent appeal. The residential wastewater gallonage cap was set at 6,000 gallons for all systems. Separate charges for public fire protection were eliminated, and the rates for private fire protection were derived by dividing the approved base facility charges for each comparable meter size by one-third. The Utility should implement the base facility and gallonage charge rate structure across the board to all 127 service areas. The water gallonage rate were increased to a minimum of $1.00 in those systems that would be less than $1.00 with stand alone rates. Residential wastewater base facility charges were calculated on one ERC. A rate differential between the residential and general service gallonage charge was established to recognize that 80% of water sold up to the maximum cap to residential customers and 96% of all water sold to general service customers is returned to the wastewater system. Rates for wastewater-only customers were calculated by multiplying the average usage of metered customers for that system by the gallonage charge and adding this to the new base facility charge. And it was determined that the rates should be billed on a monthly basis.

These rate structure changes were not at issue in the appeal and remain unchanged.

Recommendation

Based on the above discussion, if the Commission approves the primary recommendation in Issue 2, Staff recommends that the rates should be developed based on a water benchmark of $30.00 and a wastewater benchmark of $46.75 for a total bill of $76.75. These benchmarks should be calculated at 10,000 gallons of water usage. Revenue deficiencies caused by the Staff recommended benchmark should be recovered from each industry's customers. The recommended rates, before any adjustments for subsequent indexes and pass-throughs, are shown on Attachment A, which contains Schedules Nos. 1 & 2. Since this decision was rendered SSU has had two indexes and one pass-through approved by the Commission for the 127 service areas. Therefore SSU should make any necessary adjustments for indexes and pass-throughs and be required to recalculate the rates within 7 days of the Agenda Conference. SSU

should also be required to file the supporting documentation, as well as, a computer disc in a format which may be used by Staff. This would allow Staff the opportunity to not only verify the calculation of these rates, but also compute any necessary interim rates in Docket No. 950495-WS.

The utility should be required to file revised tariff sheets and proposed customer notice to reflect the appropriate rates. The approved rates should be effective for service rendered on or after the stamped approval date on the tariff sheets pursuant to Rule 25-30.475(1), Florida Administrative Code, provided the customers have received notice. The rates may not be implemented until proper notice has been received by the customers. The Utility should provide proof of the date notice was given within 10 days after the date of notice.

ISSUE 5: In the event that the Commission changes the uniform rates of SSU to another alternative, should there be a refund to customers who receive a rate reduction?

PRIMARY RECOMMENDATION: No refunds are appropriate because revenue requirement was not an issue on appeal. The rate changes should be made prospectively and no refunds should be required. Further, no refund of interim revenues is appropriate. (CHASE)

ALTERNATIVE RECOMMENDATION: Yes. (SMITH)

PRIMARY STAFF ANALYSIS: If the Commission determines that it is appropriate to discontinue uniform rates and implement some other alternate rate structure for the customers of SSU, the Commission must also consider if any refunds are appropriate. There are several concerns that must be addressed in determining whether refunds are appropriate.

The Commission typically requires security prior to implementation of rates in cases where the ultimate resolution of the case may yield a revenue requirement different from that on which secured rates are based. In this case, revenue requirement was not an issue on appeal; rather, the revenue recovery mechanism. It is important to note that we usually view security as protection only for customers. However, the Commission also protects the interests of the utility by virtue of allowing increases prior to final orders. This protects the utility by preventing delay in implementation of rates that may be fully justified. If rates are ultimately determined to be too high, a refund can be made. In addition, the utility is held harmless in the event that the increase is fully justified since it is able to collect additional revenue until a decision can be made. This is true for interim rates, rates implemented as a result of PAA decisions that are protested by a party other than the utility, overearnings investigations, and staff assisted rate cases, to name a few. Under this typical scenario, there is little or no risk to the utility for implementing the rates. However, the instant case presents a slightly different scenario.

The court has determined that the Commission has not made the necessary finding in order to have implemented uniform rates for SSU. Should the Commission accept the primary recommendation in Issue 2, rates must be changed to some other option supported by the record in this case. Then the Commission must determine what action should be taken, if any, for the period between the implementation of uniform rates and the implementation of the new rate structure. In so doing, the Commission has two irreconcilable objectives: to protect customers from overpayment, and to allow

the utility the opportunity to earn a fair rate of return.

Although not quantified for this recommendation, the Staff knows that under the recommended rate structure in Issue 4, customers served by some plants will experience a rate increase while customers of other plants will experience a rate decrease when compared to the uniform rate. A review of the schedules contained in Attachment A, based on the original test year, demonstrates the approximate impact of this change.

Under more typical circumstances where revenue requirement is at issue, the Commission's course of action would be clear. The utility would simply refund the difference to customers and go forward with the new rates. However, in this situation there are customers who also paid too little. Since the Commission did not make provisions for the utility to collect additional revenues from customers in the event of having to change rate structure, the protection the Commission normally affords the utility by permitting it to implement rates subject to refund is lost. Thus, the protection typically afforded both the customers and the utility has cut only one way.

Prior to outlining possible options, it is instructive to review the purpose for which the utility established a bond in this case. The Commission completed its disposition of pending reconsideration matters by vote at the September 28, 1993, agenda conference. Following the decisions rendered at that agenda but prior to the issuance on an order, Citrus County and Cypress and Oaks Villages Association (COVA) filed a Notice of Appeal of the Final Order on October 8, 1993, as amended October 11, 1993, with the State of Florida, First District Court of Appeal. This appeal had the effect of imposing an immediate stay of Order PSC-93-0423-FOF-WS (Final Order). This action prevented SSU from implementing final rates.

In response to that petition, SSU filed a Motion to Vacate the Stay. In accordance with the provisions of Rule 25-22.061(3), Florida Administrative Code, SSU indicated that it would extend the bond already in effect for interim purposes for a sufficient duration to comply with Commission rules necessary for a lifting of the stay. The Commission voted to vacate the stay, citing SSU's compliance with the rule as sufficient basis to do so. However, Order No. PSC-93-1788-FOF-WS, vacating the stay does not speak to the issue of whether refunds will or will not be required.

The following passages from Order No. PSC-93-1788-FOF-WS discusses the peculiarities of the case:

> The change in the rate structure in this docket creates a unique situation, particularly in light of Citrus County's statement that the amount of the revenue requirement will not be at issue. In a typical rate case appeal, any issue raised would have an effect on the final revenue requirement, and the security for the possible change in rates would be a straight forward calculation. Therefore, the focus of our determination is whether lifting the stay will cause irreparable harm and whether some form of security will adequately protect customers adversely affected. The purpose of security on appeal has always been to insure that if the utility has overcollected revenues by implementing final rates, the customers who have overpaid will have the overpayments refunded with interest. However, in this case, although the appeal may be revenue neutral, SSU's customers will still be protected.
>
> We are concerned that the utility may not be afforded its statutory opportunity to earn a fair rate of return, whether it implements the final rates and loses the appeal or does not implement final rates and prevails on appeal. Since the utility has implemented the final rates and has asked to have the stay lifted, we find that the utility has made the choice to bear the risk of loss that may be associated with implementing the final rates pending the resolution of the appeal. In its motion, the utility asserts that it does not believe that it will suffer any losses, based on its position that it will prevail on appeal. We find that an appropriate estimate of the amount to be refunded where the stay is vacated and then the final decision is reversed may be as much as $3,000,000 per year over the course of the appeal. Citrus County argues that it would be impossible to get a bond or corporate undertaking for this amount.

> The utility currently has a $5,800,000 bond which has been renewed through September 4, 1994. We find that this bond, which was originally the security for the interim rate increase, would be sufficient for the purposes of appeal if the bond issuer is willing to accept the change in the nature of the purpose of the bond. The bond shall remain in effect and must be renewed in September of 1994 if the appeal is still pending at that time.

The language from the Order Vacating the Stay outlines the dilemma and suggests that the utility accepted the risk of implementing the rates and hence refunds would be made if necessary. However, staff has reviewed the transcript of the agenda and it would suggest that a decision on refunds was not made at that time. Pages 54-66 of the transcript are appended to this memorandum as Attachment B. In summary, the discussion indicates that Chairman Deason and Commissioners Clark and Johnson all realized the nature of the dilemma and essentially accepted the proposition that the need for refunds was not an issue before the Commission at that time.

It is clear that the Commission recognized the need to secure the revenue increase both as a condition of vacating the stay and to insure funding of refunds in the event refunds were required. However, having fully discussed the possibilities of refunds, it chose not to make a decision regarding whether refunds would actually have to be made. The decision of the court now puts the issue of whether refunds should be made squarely before the Commission. Three scenarios regarding refunds are discussed below.

The first scenario would be to refund the difference to those customers that paid too much under uniform rates and also allow the utility to backbill those customers that paid too little under uniform rates such that neither the customers nor the utility are adversely impacted by the subsequent events. This option has the appeal of absolute fairness, however, the concept of backbilling is clearly a case of retroactive ratemaking and hence this scenario is not a feasible response.

The second scenario would be to order refunds to those customers who overpaid but only allow the utility to implement rate increases to those customers who underpaid, on a prospective basis. By forcing the utility to make refunds to those customers that paid too much under the uniform rates without also allowing the utility to recover additional revenue from those customers that underpaid creates a revenue shortfall for the utility. As noted above, the

revenue requirement in this case was not in dispute but rather the recovery methodology. This places the utility in the posture of having to give up revenues to which the Commission has determined they are entitled. This option rests on the hypothesis that by implementing the rates at all, pending resolution of the appeal, the utility accepted the risk of the eventuality of a refund that would create a revenue shortfall.

The Staff believes this reasoning is faulty. When a utility files a rate case with the Commission it generally does so because it is no longer earning a fair return on its investment. Section 367.082, Florida Statutes, provide some relief via interim rates that are designed to bring the utility to the minimum of the range of the last authorized rate of return. The interim increase is designed to remain in place only until final determination in the case is made by the Commission. Interim rates are by definition not designed to be fully compensatory. In the event that financial markets have fluctuated significantly since the utility's last authorized rate of return on equity, even increasing rates to the minimum of that range may not provide a utility sufficient relief to sustain it through a protracted legal battle beyond the Commission. Hence, the only reasonable thing to expect any utility to do is to attempt to implement compensatory rates as quickly as possible under any circumstance. In fact, the risk of underearning for an additional and indefinite period of 18 to 24 months, pending the outcome of a court action, is a risk in itself of significant consequence to the financial health of the utility. Therefore, Staff does not believe that the utility acted imprudently and hence this option is not appropriate. In order to have adequately protected the utility and customers the Commission would have had to have a crystal ball regarding the court and possible alternative rate structures such that additional revenues could have been recovered to protect the utility on a plant by plant basis. Such was not the case.

Finally, the last scenario is to apply the new rate structure prospectively. Under this approach the customers that paid more through the uniform rate than they will under the new structure will not get a refund but only a prospective rate reduction. The utility retains the revenues that the Commission determined it was entitled to. This option takes the view that the security was provided to protect the ratepayers of the utility as a whole and not for the protection of individual ratepayers. Since revenue requirement was not at issue, no refunds are appropriate.

In summary, the Commission has irreconcilable objectives of protecting individual customers and its responsibility to the utility to set rates which will allow an opportunity to earn a fair

rate of return. Since the revenue requirement of the utility was not in dispute in the eyes of the court, we believe it would be inappropriate to require the utility to make refunds with the inability to recover those revenues from other sources. Therefore we recommend that rates be changed prospectively and no refunds be required.

Refund of Interim

In the Joint Petition of Sugarmill Woods, et al, filed on August 28, 1995, Petitioners are requesting a refund of the interim rates to the extent that the refunds are greater than the final stand-alone rates. The argument in the Petition is that since interim rates were calculated by adding a common dollar amount to the then current rates of each service area, the interim rates were partly uniform and calculated by combining these service areas for ratemaking purposes without a finding of functional relatedness.

The Petitioner is correct that the interim rates approved in this docket were calculated by adding a common dollar amount to the then existing base facility and gallonage charges. However, this did not result in uniform interim rates, but only a "uniform" increase applied to the existing rates. Normally, interim rates are calculated by adding a fixed percentage to existing rates. As explained in Order No. PSC-92-0948-FOF-WS, the Commission was concerned that the customers of those plants with higher rates would bear the burden of a greater portion of the interim rate increase than customers of the plants with lower rates. Thus, the already significant differences in rates among the service areas would be magnified. The percentage increase over test year revenues was approximately 30% for the water plants and 50% for the wastewater plants. A 30% increase to a $3.00 base facility charge would result in an increase of $.90, while that same percentage increase to a $12.00 base facility charge would result in an increase of $3.60. Because of these concerns, the Commission found it appropriate to allocate the interim increase as a flat dollar amount increase to both the base facility charges and gallonage charges.

A refund of the interim increase was required by Orders No. PSC-93-0423-FOF-WS and PSC-93-1598-FOF-WS. The refund was necessary after the interim revenue requirements were recalculated using the same data used to establish final rates. This recalculation resulted in overages of interim revenues of 4.69% for water and 1.65% for wastewater. The same method used to calculate the interim increase was used to accomplish this refund. Thus, the interim base facility and gallonage charges were reduced by a flat dollar amount, and refunds were done based on the re-calculated

interim rates.

Staff does not believe a further refund of interim is appropriate. The parties did not appeal the orders on interim, and never took issue with the interim revenue requirement or the interim rate structure. The decision of the Court addressed the implementation of a uniform rate structure, which was used on final rates. Since the interim rates are not uniform rates, the Court's decision does not apply.

ALTERNATIVE STAFF ANALYSIS: To comply with the First District Court of Appeal's decision, the Commission should determine what rate structure is supported by the record and set rates on a going forward basis. The Commission should also determine what rates were lawfully in effect during the appeal and up to the present. Any revenues collected in excess of those rates should be refunded consistent with the Commission's Order Vacating Automatic Stay, Order No. PSC-93-1788-WS, issued December 14, 1995. That order allowed increased rates to go into effect subject to refund. Having established a refund condition for those revenues, the Commission can order a refund without violating retroactive ratemaking concepts. United Telephone Company v. Mann, 403 So. 2d 962 (Fla. 1981).

The period covered by the refund should be back to the time the stay was lifted and the uniform rates implemented. Since the Commission has filed a motion seeking relinquishment of jurisdiction from the First District Court of Appeal of Order No. PSC-94-1123-FOF-WS in Docket No. 930880-WS, the initial refund period should run up to the time that the order was issued, February 7, 1994. If jurisdiction is relinquished, it remains to be seen if the uniform rates would be effective during the pendency of the appeal. If the court rejects the Commission's attempt to get Order No. PSC-94-1123-FOF-WS back and finds it invalid for lack of a finding on functional relatedness, then the refund should be extended to the time of the court's order declaring Order No. PSC-94-1123-FOF-WS invalid. Presumably, any of these events will be some time in the future.

ISSUE 6: If the Commission determines that refunds are appropriate, how should the refunds be calculated, what period of time should refunds cover and how long should the utility be permitted to complete the refunds?

RECOMMENDATION: If the Commission requires that refunds be made, SSU should submit within 7 days of the date of the Agenda Conference, the information as detailed below for the purposes of refunds. The refunds should cover the period between the initial effective date of the uniform rate up to and including the date at which new rates are implemented. Any such refunds should be made with interest pursuant to Rule 25-30.360, Florida Administrative Code, by crediting customers' bills over the same time period the revenues were collected. SSU should be required to file refund reports pursuant to Rule 25-30.360(7), Florida Administrative Code. SSU should apply any unclaimed refunds as contributions in aid of construction (CIAC) for the respective plants, pursuant to Rule 25-30.360(8), Florida Administrative Code. (Rendell)

STAFF ANALYSIS: If the Commission determines that a refund is appropriate, refunds should be ordered to the customers of the following plants:

WATER	WASTEWATER
APPLE VALLEY	AMELIA ISLAND
BEACON HILLS	APPLE VALLEY
DELTONA UTILITIES	BEACON HILLS
LEILANI HEIGHTS	CITRUS SPRINGS UTILITIES
SILVER LAKES EST./ WESTERN SHORES	LEISURE LAKES
SPRING HILL UTILITIES	SPRING HILL UTILITIES
SUGAR MILL WOODS	SUGAR MILL
UNIVERSITY SHORES	SUGAR MILL WOODS
WOODMERE	SUNSHINE PARKWAY
	UNIVERSITY SHORES
	ZEPHYR SHORES

These plants are identified on Schedules Nos. 1 & 2, contained in Attachment A. As indicated on these schedules, the rates charged to these plants result in an "overcollection" when comparing the statewide uniform rates with the modified stand-alone rates. Any "overcollections" and refunds that result through the implementation of statewide uniform rates should be offset by the allowed subsidies under staff's recommended modified stand-alone rates in Issue 4.

Refund Methodology

To determine the refund for these customers, the revenue requirement allocated to these plants under the statewide rate should be calculated, less miscellaneous service revenues. Then this amount should be compared to the revenue requirement allocated to these plants under the recommended modified stand-alone rates, less miscellaneous service revenues. The resulting percentage difference would then be applied to the service revenues collected from each customer of those plants, during the time the refund is ordered. That result would be the refund due to the water and wastewater customers. SSU should also be cognizant of the two indexes and the pass-through approved since the Commission's decision in Docket No. 920199-WS, and should make the appropriate adjustments to this refund amount.

Refund Period

The Court has determined that uniform rates should not have been implemented for any period of time in this docket since the finding that SSU's facilities and land were functionally related was not made. The utility implemented the final rates in September, 1993. Therefore, the utility should determine the refunds for the entire period, from the time the uniform rate was implemented until a new rate structure can be implemented. The utility should submit the completed calculations of the new rates and the corresponding refund amounts within 7 days of the date of the Agenda Conference.

Interest

In the Joint Petition, the intervenors request that the Commission require SSU to pay each customer interest, compounded monthly on the "outstanding overcharge balance," at the applicable interest rate prescribed in Section 55.03, Florida Statutes, for interest payable on judgments and decrees. The Joint Petition contains no rationale for this request.

According to Section 367.081(6), Florida Statutes, the Commission "shall direct the utility to refund with interest at a fair rate to be determined by the commission...." If the Commission requires a refund, Staff agrees that such refund should be made with interest. Staff believes, however, that Section 367.081, Florida Statutes, as the more specific statute, and not Section 55.03, Florida Statutes, is applicable here. Pursuant to Section 367.081(6), Florida Statutes, the Commission has determined how interest on refunds should be calculated. Rule 25-30.360(4)(a), Florida Administrative Code:

> In the case of refunds which the Commission orders to be made with interest, the average monthly interest rate until refund is posted to the customer's account shall be based on the 30 day commercial paper rate for high grade, unsecured notes sold through dealers by major corporation in multiples of $1,000 as regularly published in the Wall Street Journal.

Rule 25-30.360(4)(b), Florida Administrative Code, provides that the average monthly interest rate shall be calculated for each month of the refund period.

Length of Time for Refunds

Depending on the rate structure approved by the Commission, the amount of the refund could range between $5 and $9 million. A refund of this magnitude would weaken SSU's liquidity and interest coverage, which are important factors in determining a company's credit worthiness. Based on 1995 unaudited budget information provided on a total company basis in the current rate case (Docket No. 9504950-WS), the company projects an interest coverage ratio of 1.43x. For 1993 and 1994, the company's interest coverage ratio was 1.11x and 1.07x, respectively. Standard and Poor's benchmark coverage ratio for BBB-rated water companies ranges from 1.25x for companies with low business risk to 2.75x for companies with high business risk. Also, the company's bond indenture agreements require a minimum interest coverage ratio of 1.25x for 1995 and 1.50x after that.

To measure liquidity, Staff has used the current ratio, which is the ratio of current assets to current liabilities. For 1995, the company projects a current ratio of .64. The average current ratio for the water companies used for the Commission's leverage formula is .80. Whether the payment of the refund decreases current assets or increases current liabilities, the result will be a decrease in the company's current ratio. Staff notes that the impact will be reduced if the refund is spread over a number of months.

SSU projects total investor capital of $186,679,624 at the end of 1995. The equity ratio at the end of 1995 is 43.38%. Therefore, the addition of $7 million in debt would have a relatively small effect on total company financial ratios, though the effect would be in the direction of weakening financial ratios that are currently somewhat weak.

Based on the above financial analysis, the utility should be permitted the same time period these revenues were collected to complete the refunds. Refunds should be made with interest pursuant Rule 25-30.360, Florida Administrative Code, with the following exception. Rule 25-30.360(2), Florida Administrative Code, indicates that "Refunds must be made within 90 days of the Commission's order unless a different time frame is prescribed by the Commission." However, due to the extraordinary circumstances in this case, SSU should be allowed to refund monies by crediting customers' bills over the same time period the revenues were collected.

Further, SSU should be required to file refund reports pursuant to Rule 25-30.360(7), Florida Administrative Code. SSU should apply any unclaimed refunds as contributions in aid of construction (CIAC) for the respective plants, pursuant to Rule 25-30.360(8), Florida Administrative Code.

ISSUE 7: Should the Joint Petition for Implementation of Stand-Alone Water and Wastewater Rates for SSU and for the Immediate Repayment of Illegal Overcharges with Interest, filed by Springhill, Sugarmill Woods, and Citrus County, be granted?

RECOMMENDATION: Whether or not this Petition should be granted or to what degree will be determined by the Commission's decisions on the previous issues. (JABER, WILLIS, CHASE)

STAFF ANALYSIS: As stated in the case background, on August 28, 1995, Sugarmill Woods, Citrus County, and Springhill filed a Joint Petition for Implementation of Stand-Alone Water and Wastewater Rates for SSU and for the Immediate Repayment of Illegal Overcharges with Interest. In their petition, the parties request that the Commission immediately reduce the rates charged pursuant to Order No. PSC-93-0423-FOF-WS, immediately order SSU to make a cash refund to the customers for the difference for the period interim rates were charged, as well as the period permanent rates were approved, and require SSU to pay interest compounded monthly on all refunds from the date interim rates were first approved to the date refunds are made.

The requests made in the Joint Petition are addressed in various portions of this recommendation and the Commission's decision on the previous issues will dispose of this Petition.

AUGUST 31, 1995

SOUTHERN STATES UTILITIES, INC.
DOCKET NO. 920199-WS
SCHEDULE OF WATER RATES

ATTACHMENT A
SCHEDULE NO. 1

Water System	Billing Data			Revenue Requirement Data			Rates Prior to Rate Case		Statewide Uniform Rates		Benchmark Rates of $30.00 @ 10m	
	Number Bills	Factored ERCs	Gallons Sold	System Revenue Requirement	Statewide Rates (Over) Under	Capped Rates (Over) Under	Base Facility Charge	Gallonage Charge	Base Facility Charge	Gallonage Charge	Base Facility Charge	Gallonage Charge
Amelia Island	14,101	26,370	264,056	$395,627	($56,940)	$678	$9.26	$0.97	$5.00	$1.19	$4.71	$1.00
Apache Shores	1,923	1,923	3,148	$33,235	$19,494	$7,387	$5.62	$4.71	$5.00	$1.19	$9.97	$2.00
Apple Valley	11,002	11,850	121,842	$163,064	($44,935)	($26,017)	$5.39	$1.00	$5.00	$1.19	$5.36	$1.00
Bay Lake Estates	775	775	5,743	$24,179	$12,240	$2,926	* $9.62	$0.51	$5.00	$1.19	$9.97	$2.00
Beacon Hills	31,202	32,102	420,572	$518,413	($155,179)	($75,269)	$5.03	$0.85	$5.00	$1.19	$5.00	$1.00
Beecher's Point	468	942	4,283	$23,033	$13,136	$4,985	$6.66	$1.49	$5.00	$1.19	$9.97	$2.00
Burnt Store	2,237	6,836	44,166	$258,180	$170,280	$100,529	$7.51	$2.81	$5.00	$1.19	$9.97	$2.00
Carlton Village	1,236	1,236	8,556	$21,185	$3,948	$42	$5.88	$1.48	$5.00	$1.19	$5.91	$1.48
Chuluota	7,708	8,060	60,048	$207,017	$103,285	$22,668	$5.39	$1.00	$5.00	$1.19	$9.97	$2.00
Citrus Park	4,230	4,230	24,629	$61,566	$7,102	$131	$8.65	$0.98	$5.00	$1.19	$8.59	$1.20
Citrus Springs Utilities	19,769	21,873	123,413	$437,127	$176,770	$621	$8.32	$1.03	$5.00	$1.19	$9.95	$1.74
Crystal River Highlands	798	798	4,514	$23,269	$13,707	$6,085	$3.05	$0.84	$5.00	$1.19	$9.97	$2.00
Daetwyler Shores	1,552	1,654	14,311	$33,498	$7,873	$54	$4.09	$1.04	$5.00	$1.19	$6.18	$1.60
Deltona Utilities	262,447	283,628	2,655,963	$4,203,631	($488,555)	($959)	$3.18	$0.85	$5.00	$1.19	$4.03	$1.11
Del Ray Manor	702	702	11,000	$24,782	$8,102	$23	$5.39	$1.00	$5.00	$1.19	$8.36	$1.71
Druid Hills	3,022	4,046	40,111	$90,212	$11,510	$132	$5.39	$1.00	$5.00	$1.19	$6.92	$1.28
East Lake Harris Estates	2,040	2,040	5,228	$27,001	$10,255	$65	$5.88	$1.48	$5.00	$1.19	$8.15	$1.91
Fern Park	2,210	2,278	14,973	$36,760	$8,547	$56	$5.39	$1.00	$5.00	$1.19	$7.48	$1.38
Fern Terrace	1,480	1,498	11,150	$21,523	$75	($4,432)	$5.88	$1.48	$5.00	$1.19	$5.85	$1.48
Fisherman's Haven	1,846	1,846	9,304	$23,278	$3,471	$56	$4.12	$0.76	$5.00	$1.19	$6.34	$1.32
Fountains	180	180	1,440	$23,120	$20,281	$18,220	$5.67	$2.33	$5.00	$1.19	$9.97	$2.00
Fox Run	1,104	1,107	9,727	$74,030	$56,090	$42,709	$4.45	$1.14	$5.00	$1.19	$9.97	$2.00
Friendly Center	242	242	1,418	$8,631	$3,709	$1,357	$5.88	$1.48	$5.00	$1.19	$9.97	$2.00
Golden Terrace	1,257	1,439	4,294	$24,822	$12,277	$1,647	* $8.97	$2.53	$5.00	$1.19	$9.97	$2.00
Gospel Island Estates	98	98	573	$10,417	$9,215	$8,264	$5.00	$1.00	$5.00	$1.19	$9.97	$2.00
Grand Terrace	797	813	4,524	$22,063	$11,949	$4,244	$8.62	$1.18	$5.00	$1.19	$9.97	$2.00
Harmony Homes	764	764	8,065	$21,916	$7,389	$20	$5.39	$1.00	$5.00	$1.19	$8.05	$1.72
Hermits Cove	2,136	2,136	8,087	$44,899	$26,110	$10,564	$5.59	$2.53	$5.00	$1.19	$9.97	$2.00
Hobby Hills	1,224	1,224	5,497	$22,672	$8,851	$34	$5.88	$1.48	$5.00	$1.19	$8.79	$1.85
Holiday Haven	1,348	1,430	4,035	$28,615	$16,228	$5,853	* $11.14	$3.20	$5.00	$1.19	$9.97	$2.00
Holiday Heights	631	631	6,021	$18,287	$7,667	$18	$7.68	$1.29	$5.00	$1.19	$9.87	$1.95
Imperial Mobile Terrace	2,943	2,957	15,883	$42,705	$8,974	$84	$2.98	$0.55	$5.00	$1.19	$6.81	$1.45
Intercession City	3,074	3,110	13,245	$69,872	$55,815	$29,830	$5.67	$2.33	$5.00	$1.19	$9.97	$2.00
Interlachen Lake Est./Park Manor	2,948	2,976	11,106	$51,970	$23,021	$78	$5.59	$1.41	$5.00	$1.19	$9.91	$1.94
Jungle Den	1,376	1,376	2,853	$26,575	$15,766	$8,535	* $10.88	$3.18	$5.00	$1.19	$9.97	$2.00
Keystone Heights	11,786	14,535	100,236	$250,462	$55,041	$436	$5.50	$1.26	$5.00	$1.19	$6.55	$1.51
Kingswood	753	753	3,417	$16,693	$8,102	$1,592	$5.47	$2.55	$5.00	$1.19	$9.97	$2.00
Lake Ajay Estates	420	492	4,183	$33,362	$25,858	$19,841	$5.37	$2.20	$5.00	$1.19	$9.97	$2.00
Lake Brantley	796	796	7,056	$19,128	$6,161	$25	$5.39	$1.00	$5.00	$1.19	$7.77	$1.75
Lake Conway Park	1,022	1,022	8,374	$24,368	$9,054	($3)	$4.09	$1.04	$5.00	$1.19	$8.70	$1.82
Lake Harriet Estates	3,418	3,436	29,442	$54,033	$507	$99	$5.39	$1.00	$5.00	$1.19	$5.89	$1.10
Lakeview Villas	156	156	368	$8,662	$7,374	$6,291	$2.93	$0.83	$5.00	$1.19	$9.97	$2.00
Leilani Heights	4,668	4,668	46,855	$81,784	($1,618)	$159	$4.77	$0.78	$5.00	$1.19	$6.32	$1.02
Leisure Lakes	2,925	2,925	8,539	$49,362	$24,551	$3,097	$7.16	$0.97	$5.00	$1.19	$9.97	$2.00
Marco Shores Utilities	3,306	5,000	36,839	$179,186	$108,643	$53,953	$9.15	$1.66	$5.00	$1.19	$9.97	$2.00
Marion Oaks Utilities	26,533	28,350	131,409	$724,667	$417,325	$189,985	$5.10	$1.63	$5.00	$1.19	$9.97	$2.00
Meredith Manor	8,082	9,323	72,386	$141,281	$4,927	$248	$5.39	$1.00	$5.00	$1.19	$5.89	$1.14

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AUGUST 31, 1995

SOUTHERN STATES UTILITIES, INC.
DOCKET NO. 920199-WS
SCHEDULE OF WATER RATES

ATTACHMENT A
SCHEDULE NO. 1

Water System	Billing Data			Revenue Requirement Data			Rates Prior to Rate Case		Statewide Uniform Rates		Benchmark Rates of $30.00 @ 10m	
	Number Bills	Factored ERCs	Gallons Sold	System Revenue Requirement	Statewide Rates (Over) Under	Capped Rates (Over) Under	Base Facility Charge	Gallonage Charge	Base Facility Charge	Gallonage Charge	Base Facility Charge	Gallonage Charge
Morningview	414	552	3,520	$13,773	$6,729	$1,135	$5.88	$1.48	$5.00	$1.19	$9.97	$2.00
Oak Forest	1,654	1,713	12,804	$33,547	$9,530	$49	$4.78	$0.85	$5.00	$1.19	$7.47	$1.60
Oakwood	2,336	2,336	9,557	$44,456	$19,928	$577	$5.47	$2.55	$5.00	$1.19	$9.97	$2.00
Palisades Country Club	328	328	6,540	$26,925	$17,497	$10,580	$5.88	$1.48	$5.00	$1.19	$9.97	$2.00
Palm Port	1,088	1,088	4,159	$19,386	$6,517	($218)	$5.59	$2.53	$5.00	$1.19	$9.97	$1.99
Palm Terrace	14,205	14,489	68,976	$358,559	$200,768	$72,988	$3.25	$3.07	$5.00	$1.19	$9.97	$2.00
Palms Mobile Home Park	730	730	2,107	$11,049	$4,788	$21	$5.88	$1.48	$5.00	$1.19	$9.45	$1.90
Park Manor – Combined with Interlachen Lakes Estates (Interconnected)				–	$0	$0	$5.59	$2.53	$5.00	$1.19	$9.91	$1.84
Picciola Island	1,568	1,607	11,888	$25,660	$2,883	($1,650)	$5.88	$1.48	$5.00	$1.19	$5.85	$1.48
Pine Ridge Estates	2,062	2,128	13,098	$43,599	$16,615	$56	$5.67	$2.33	$5.00	$1.19	$8.60	$1.87
Pine Ridge Utilities	4,789	11,371	63,152	$168,898	$34,804	$388	* $20.61	$1.27	$5.00	$1.19	$5.01	$1.73
Piney Woods	2,018	2,018	16,702	$38,577	$8,867	$18	$5.88	$1.48	$5.00	$1.19	$8.24	$1.57
Point O' Woods	3,908	3,983	17,142	$66,516	$25,155	$180	$3.43	$0.95	$5.00	$1.19	$8.43	$1.85
Pomona Park	1,924	2,092	7,261	$30,996	$11,070	$85	$5.59	$2.53	$5.00	$1.19	$7.97	$1.85
Postmaster Village	1,818	1,818	14,606	$51,325	$24,426	$3,559	* $5.00	$0.54	$5.00	$1.19	$9.97	$2.00
Quail Ridge	228	228	1,140	$9,368	$6,841	$4,785	$5.88	$1.48	$5.00	$1.19	$9.97	$2.00
River Grove	1,284	1,284	5,565	$31,095	$17,357	$6,468	$5.59	$2.53	$5.00	$1.19	$9.97	$2.00
River Park	4,144	4,144	9,889	$62,427	$28,912	$468	$5.59	$2.53	$5.00	$1.19	$9.97	$2.00
Rolling Green/Rosemont	1,286	1,289	15,708	$63,232	$37,109	$17,980	$5.38	$1.08	$5.00	$1.19	$9.97	$2.00
Rosemont – Combined with Rolling Green (Interconnected)				–	$0	$0	$5.31	$1.08	$5.00	$1.19	$9.97	$2.00
Salt Springs	1,342	1,858	5,654	$101,484	$85,047	$71,233	$6.65	$0.86	$5.00	$1.19	$9.97	$2.00
Samira Villas	24	156	1,151	$5,868	$3,718	$2,011	$4.64	$1.03	$5.00	$1.19	$9.97	$2.00
Saratoga Harbour/Welaka	1,578	1,594	4,643	$38,787	$22,727	$11,044	$5.59	$2.53	$5.00	$1.19	$9.97	$2.00
Silver Lake Est./Western Shores	14,554	18,250	260,971	$203,782	($201,766)	($133,934)	$3.22	$0.57	$5.00	$1.19	$4.00	$1.00
Silver Lake Oaks	312	312	1,170	$15,655	$12,353	$8,854	$5.18	$2.35	$5.00	$1.19	$9.97	$2.00
Skycrest	1,376	1,376	5,330	$20,479	$6,668	$37	$5.88	$1.48	$5.00	$1.19	$7.30	$1.84
Spring Hill Utilities	271,533	303,022	2,795,838	$3,749,228	($1,184,814)	($230,583)	$2.75	$0.74	$5.00	$1.19	$4.00	$1.00
St. John's Highlands	952	952	3,156	$18,609	$9,832	$2,545	$5.59	$1.41	$5.00	$1.19	$9.97	$2.00
Stone Mountain	74	74	1,269	$6,378	$4,469	$3,073	$5.88	$1.48	$5.00	$1.19	$9.97	$2.00
Sugar Mill	7,206	7,631	25,103	$143,190	$73,847	$15,586	$6.89	$4.10	$5.00	$1.19	$9.97	$2.00
Sugar Mill Woods	21,674	51,705	336,802	$419,542	($243,967)	($126,270)	$2.00	$0.58	$5.00	$1.19	$4.00	$1.00
Sunny Hills Utilities	4,992	7,280	30,075	$155,743	$82,844	$22,301	* $5.88	$1.37	$5.00	$1.19	$9.97	$2.00
Sunshine Parkway	81	494	13,024	$35,177	$17,194	$4,339	* $4.59	$0.91	$5.00	$1.19	$9.97	$2.00
Tropical Park	6,636	6,846	31,108	$114,964	$38,185	($2,705)	$5.12	$2.09	$5.00	$1.19	$8.12	$1.85
University Shores	33,864	37,652	335,850	$543,984	($65,533)	($124,991)	$5.62	$1.30	$5.00	$1.19	$5.59	$1.30
Venetian Village	1,570	1,570	8,333	$25,481	$7,355	$150	$5.88	$1.48	$5.00	$1.19	$8.67	$1.74
Welaka – Combined with Saratoga Harbour (Interconnected)				–	$0	$0	$5.59	$2.53	$5.00	$1.19	$9.97	$2.00
Western Shores – Combined with Silver Lake Estates (Interconnected)				–	$0	$0	$5.88	$1.48	$5.00	$1.19	$4.00	$1.00
Westmont	1,488	1,488	11,383	$29,282	$7,481	$43	$9.15	$1.82	$5.00	$1.19	$7.90	$1.47
Windsong	1,310	1,328	7,559	$35,778	$19,308	$6,585	$5.67	$2.33	$5.00	$1.19	$9.97	$2.00
Woodmere	12,900	17,658	180,595	$285,496	($41,179)	($6,872)	$5.03	$0.95	$5.00	$1.19	$5.00	$1.00
Wootens	208	208	413	$6,937	$5,361	$4,002	$5.59	$2.53	$5.00	$1.19	$9.97	$2.00
Zephyr Shores	6,167	6,571	21,704	$88,178	$25,751	$224	* $5.90	$0.87	$5.00	$1.19	$8.87	$1.80
TOTALS	890,162	1,027,391	8,748,481	$15,426,705	($39,512)	($31,839)						

REMARKS:
* Present rates include minimum gallonage.

002355

2934

AUGUST 31, 1995

SOUTHERN STATES UTILITIES, INC.
DOCKET NO. 920199-WS
SCHEDULE OF WASTEWATER RATES

ATTACHMENT A
SCHEDULE NO. 2

Wastewater System	Billing Data			Revenue Requirement Data			Rates Prior to Rate Case			Statewide Uniform Rates		Benchmark Rates of $46.75 @ 6m	
	Number Bills	Factored ERCs	Factored Gallons (Res. – 6M)	System Revenue Requirement	Statewide Rates (Over) Under	Capped $46.75 Rates (Over) Under	Base Facility Charge	Gallonage Charge	Gallonage Cap	Base Facility Charge	Gallonage Charge	Base Facility Charge	Gallonage Charge
Amelia Island	12,055	17,967	176,926	$679,126	($139,982)	($51,336)	$16.59	$1.55	10M	$12.01	$3.41	$12.00	$2.91
Apache Shores	1,340	1,340	1,664	$38,729	$8,893	$4,598	$7.35	$4.78	10M	$12.01	$3.41	$12.00	$5.79
Apple Valley	1,996	2,014	10,347	$52,533	($6,938)	($20,680)	$8.64	$3.56	10M	$12.01	$3.41	$12.00	$4.74
Beacon Hills	29,632	29,604	166,831	$727,476	($195,364)	($49,822)	$7.46	$1.65	6M	$12.01	$3.41	$11.96	$2.51
Beecher's Point	191	455	781	$20,339	$12,211	$10,357	$6.55	$2.22	10M	$12.01	$3.41	$12.00	$5.79
Burnt Store	1,749	4,343	29,991	$177,769	$93,590	($7,648)	$5.96	$1.79	10M	$12.01	$3.41	$11.96	$4.95
Chuluota	1,576	1,576	6,372	$240,511	$189,631	$184,881	$8.64	$3.56	10M	$12.01	$3.41	$12.00	$5.79
Citrus Park	3,105	3,105	12,120	$162,172	$103,540	$74,725	$12.25	$2.28	6M	$12.01	$3.41	$12.00	$5.79
Citrus Springs Utilities	8,136	8,154	27,250	$161,166	($29,686)	($7,605)	$12.00	$1.77	10M	$12.01	$3.41	$12.00	$2.61
Deltona Utilities	53,016	57,714	256,985	$2,038,642	$451,050	($17,136)	$13.30	–	Flat Rate	$12.01	$3.41	$12.00	$5.22
Fisherman's Haven	1,748	1,748	6,512	$46,032	$2,857	($1,660)	$5.57	$1.47	7M	$12.01	$3.41	$12.00	$4.14
Florida Cental Commerce Park	284	1,365	13,405	$109,105	$43,402	$2,397	$8.64	$4.25	All G/S	$12.01	$3.41	$12.00	$6.47
Fox Run	1,079	1,079	5,467	$47,327	$15,623	$2,551	$9.99	–	Flat Rate	$12.01	$3.41	$12.00	$5.79
Holiday Haven	1,147	1,231	3,129	$38,167	$12,713	$5,278	$12.14	–	Flat Rate	$12.01	$3.41	$12.00	$5.79
Jungle Den	1,376	1,376	2,779	$96,297	$70,315	$63,729	$11.38	–	Flat Rate	$12.01	$3.41	$12.00	$5.79
Leilani Heights	4,648	4,733	25,353	$158,343	$15,046	($7,471)	$13.25	$3.32	10M	$12.01	$3.41	$12.00	$4.30
Leisure Lakes	2,752	2,752	6,884	$31,710	($24,748)	($6,025)	$7.85	$1.22	10M	$12.01	$3.41	$8.00	$2.29
Marco Shores Utilities	2,634	3,484	12,523	$130,467	$45,580	$15,572	$24.25	–	Flat Rate	$12.01	$3.41	$12.00	$5.79
Marion Oaks Utilities	15,126	16,522	51,354	$592,621	$231,265	$109,217	$9.11	$3.60	10M	$12.01	$3.41	$12.00	$5.79
Meredith Manor	326	326	1,756	$11,953	$2,036	($507)	$8.64	$3.56	10M	$12.01	$3.41	$12.00	$4.86
Morningview	424	424	2,066	$28,394	$16,257	$11,344	$13.10	$3.88	10M	$12.01	$3.41	$12.00	$5.79
Palm Port	1,074	1,074	5,665	$38,911	$5,515	($1,072)	$8.95	$3.94	6M	$12.01	$3.41	$12.00	$5.21
Palm Terrace	12,223	12,223	42,139	$296,626	$8,134	($12,392)	$5.40	$0.77	6M	$12.01	$3.41	$12.00	$3.90
Park Manor	340	368	1,352	$17,906	$9,573	$5,664	$8.95	$3.94	6M	$12.01	$3.41	$12.00	$5.79
Point O' Woods	1,363	1,363	4,344	$56,851	$25,668	$15,343	$16.26	–	Flat Rate	$12.01	$3.41	$12.00	$5.79
Salt Springs	1,316	2,058	9,504	$70,059	$12,593	($2,753)	$12.25	$2.28	6M	$12.01	$3.41	$12.00	$5.01
Silver Lake Oaks	296	296	969	$16,294	$9,455	$7,131	$8.65	$3.77	6M	$12.01	$3.41	$12.00	$5.79
South Ferry	259	560	5,991	$116,449	$85,614	$61,291	$12.23	$2.71	All G/S	$12.01	$3.41	$12.00	$8.69
Spring Hill Utilities	58,153	64,318	375,336	$1,351,857	($700,505)	($207,148)	$6.74	$2.75	10M	$12.01	$3.41	$10.00	$2.44
Sugar Mill	7,035	7,353	22,991	$160,915	($3,846)	($6,461)	$11.51	$3.04	10M	$12.01	$3.41	$12.00	$3.59
Sugar Mill Woods	20,927	21,791	114,425	$368,275	($284,804)	($94,939)	$8.08	$2.21	6M	$12.01	$3.41	$8.06	$2.50
Sunny Hills Utilities	2,099	2,099	7,397	$105,216	$54,783	$37,199	$22.96	–	Flat Rate	$12.01	$3.41	$12.00	$5.79
Sunshine Parkway	71	611	10,640	$39,361	($4,250)	($3,083)	$6.43	$1.59	All G/S	$12.01	$3.41	$12.00	$3.30
University Shores	30,803	31,770	247,324	$1,113,147	($111,786)	($71,598)	$7.26	$2.39	10M	$12.01	$3.41	$12.00	$3.25
Venetian Village	986	986	4,348	$38,664	$12,015	$1,677	$13.10	$3.88	10M	$12.01	$3.41	$12.00	$5.79
Woodmere	12,476	17,560	132,308	$704,262	$48,322	($36,232)	$7.46	$1.65	6M	$12.01	$3.41	$12.00	$4.07
Zephyr Shores	72	6,232	16,794	$93,645	($36,469)	($4,659)	$5.69	–	Flat Rate	$12.01	$3.41	$9.02	$2.52
TOTALS	284,678	330,577	1,819,650	$10,179,469	($8,703)	$1,184							

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION
TALLAHASSEE, FLORIDA

IN RE: Application for a rate increase by SOUTHERN STATES UTILITIES, INC.

DOCKET NO. 920199-WS

BEFORE:	CHAIRMAN J. TERRY DEASON COMMISSIONER SUSAN F. CLARK COMMISSIONER LUIS J. LAUREDO COMMISSIONER JULIA L. JOHNSON
PROCEEDING:	AGENDA CONFERENCE
ITEM NUMBER:	25A**
DATE:	November 23, 1993
PLACE:	106 Fletcher Building Tallahassee, Florida
REPORTED BY:	JANE FAUROT Notary Public in and for the State of Florida at Large

ACCURATE STENOTYPE REPORTERS, INC.
100 SALEM COURT
TALLAHASSEE, FLORIDA 32301
(904) 878-2221

part, you're saying there is not going to be a refund to those customers who are paying more?

MR. HOFFMAN: Our position that we have taken, Mr. Chairman, is that there is not a refund. And I think I have already explained to you why. But what I'm saying to you is we do not dispute, particularly now that Public Counsel has filed an appeal and they are going to put revenue requirements at issue, we do not dispute the need for corporate undertaking or bond at this point of this proceeding and we are willing to make sure that it's posted.

CHAIRMAN DEASON: But that is a question of overall revenue requirements, not customer-specific rates?

MR. HOFFMAN: That's correct.

CHAIRMAN DEASON: Does Staff agree with that?

MS. BEDELL: Yes.

COMMISSIONER CLARK: Surely this has come up before where we have had a rate design at issue. Maybe it's not come up, maybe not in water and sewer.

MR. WILLIS: Commissioners, I can't remember in the past where we had a rate design at issue after the final decision of the Commission.

COMMISSIONER CLARK: Well, the fact of the matter is it's not at all clear as to whether or not there

would be a refund for those people who overpaid based on -- who would pay more under statewide rates than stand-alone.

MR. WILLIS: That's correct.

COMMISSIONER CLARK: It's not at all clear that it just wouldn't be from a going-forward standpoint that you would address the rates, and the rates that were in effect is water under the bridge.

MR. WILLIS: I agree with you, Commissioner, it's not clear at all.

COMMISSIONER JOHNSON: So how do we make these people whole? Or we can't.

MR. WILLIS: Well, Commissioner, I think if there is protection in place, whether it be a corporate undertaking or a bond, which we are recommending a bond, those customers will be held whole. I mean, if someone in the future dictates that those customers who are paying more now under uniform rates than they would be under stand-alone are deserving of a refund, then those customers would receive a refund with interest.

COMMISSIONER CLARK: That's the part that's not clear, that we have never addressed before when it's an issue of money between customers and not the overall revenue what you do.

MR. WILLIS: (Indicating yes.)

MR. HILL: The customers are going to be protected. There is not a doubt in my mind about that. It's the Company that's going to be at risk, and I won't try to drag this out to explain it.

COMMISSIONER CLARK: But I think that Commissioner Johnson is correct, is that the customers as a whole are protected, but not individual customers that under statewide rates are paying more than they would under stand-alone.

MR. HILL: I believe that if the courts say --

COMMISSIONER CLARK: A bond doesn't address that at all.

MR. HILL: I understand. And if the courts say that you cannot do what you have done, then you have got to go back to a system-specific rate and revenue requirement. That's where you have to go, there is no other place to go. And we may end up arguing with the utility over refunds, but there isn't a doubt in my mind that if we are reversed on that and have to redo it, they have collected money they should not have collected and it will have to be refunded. And the Company will end up on the short end of it.

COMMISSIONER CLARK: Well, they have collected money they should have recovered from the wrong people.

MR. HILL: Absolutely, and they will have no way

to go back to the right people and collect those funds.

COMMISSIONER CLARK: Unless you do an adjustment on a going-forward basis to remedy that, but I'm not sure you can.

CHAIRMAN DEASON: And what Mr. Hoffman is saying, it's his opinion that the Company is not putting itself at risk, it does not have the liability to make the customer-specific whole. Their only requirement is to make customers as a general body of ratepayers whole. That is, if they have collected more total revenue than what they are authorized as a result of the final decision on appeal, they are liable for that, but they are not liable to make specific customers whole.

MR. HILL: And while that's an interesting argument, I think that if indeed we are overturned by the courts, then the revenue requirements fall out on a system-specific basis, and I think the Company will be on shaky ground with that argument and will lose money.

MS. BEDELL: May I make a suggestion? In terms of trying to make a determination of what the Company may have to do in terms of a refund, under both the appellate rule on stays -- it provides that you can set conditions for the stay, or for vacating the stay it would seem to me. If you set a condition related to how, you know, the end result when the appellate court

makes a final decision.

CHAIRMAN DEASON: I understand what you're saying, but wouldn't it be unfair to Southern States to say that we are going to vacate the stay and put you at risk for making those customers who pay more, but we are not going to give you the opportunity to recoup from those customers who should have paid more but who did not pay more? Isn't that a very difficult position to put the Company in?

MS. BEDELL: Yes, I think so. The whole situation is difficult.

CHAIRMAN DEASON: Oh, I agree with that. I think you can get a unanimous decision on that right now. I think even the parties would stipulate to that.

COMMISSIONER JOHNSON: Mr. Hoffman, how would you respond to the argument posed by opposing counsel that Rule 25-22.061(3) does not include a mandatory nature behind it, and that that would be a constitutional violation?

MR. HOFFMAN: The first time I've heard it is today. If they are saying that the word shall does not include a mandatory nature, I can only tell you that my common meaning of that word in the research I've done on statutory interpretation tells me they are wrong. I think Commissioner Clark summed it up, she said to Mr.

Gross you are saying that we have an illegal rule, or an invalid rule. I disagree with that. I think the Commission has a valid rule, and that that rule is within its discretion.

COMMISSIONER CLARK: And, Commissioner Johnson, if memory serves me correct, we were encouraged by the court, and I'm not sure if it was the Supreme Court, it may have been. They got tired of dealing with motions to vacate stays, and they told us -- how did they tell us? In oral argument I can recall some pointed questions being why don't you have any rules that state the circumstances under which a stay will be granted so that they don't have to deal with it again. That doesn't dispose of the question as to whether we did it right, but it was certainly my recollection that the court was tired of dealing with the stays and wanted us to deal with them.

CHAIRMAN DEASON: Do we have the option of letting them deal with it?

COMMISSIONER CLARK: I think they would admonish us for not doing what the rule said we should do.

CHAIRMAN DEASON: Commissioners, I think we need to move along. If we are ready for a motion now, fine, if we're not, I suggest we just take a ten-minute recess and come back and then dispose of this as

quickly as possible. What's your pleasure? In other words, let's move along one way or the other.

COMMISSIONER CLARK: Mr. Chairman, I don't see that we have any discretion, and I agree with Commission Staff on this point. I think we set out the rules that indicate that a posting of a bond will allow us a vacation of the stay, and as Mr. Hoffman pointed out, the Commission order, which did concern me, only provided for a stay of refund of the interim rates, it wasn't with respect to the implementation of the rates. And for that reason I would move Staff on all three issues.

COMMISSIONER JOHNSON: Second.

CHAIRMAN DEASON: It has been moved and seconded. Let me state right now that I'm going to vote against the motion. I am persuaded by the argument that we are moving into a new area here where there are differences between rates for different customers in different areas, and that in my opinion we should keep the status quo, which are interim rates, and let the court give the guidance to the Commission that it sees fit. I don't see where -- even though there is going to be a bond posted, it's not going to be for the purposes of making individual specific customers whole, it's going to be for the purpose of making customers as a total

rate paying body whole. And that's really not the main crux of this appeal, so I would oppose that. But, anyway, we have a motion and a second --

COMMISSIONER CLARK: Mr. Chairman, can I just ask a question? The concern I have is the interim rates don't generate the rates that we concluded they were entitled to. I mean --

CHAIRMAN DEASON: The interim rates, what are the differences between the interim rates and the final rates that have a statewide rate structure? Very minimal, is it not?

MR. TWOMEY: They generate more, Mr. Chairman.

CHAIRMAN DEASON: That's what I thought. I thought it was either minimal or it either generated more. What's the case, Mr. Hoffman?

MR. HOFFMAN: My understanding is that as revised, the interim rates as revised after Commissioner Clark's motion for reconsideration is a total revenue requirement increase of 6.4 million as opposed to 6.7 million final rates.

COMMISSIONER CLARK: Which is the final rates?

MR. HOFFMAN: Yes.

CHAIRMAN DEASON: I consider that difference to be pretty inconsequential given the magnitude of the real issue, which is the rate structure involved. I would

just keep interim rates.

Moved and seconded, all in favor say aye.

COMMISSIONER CLARK: Aye.

COMMISSIONER JOHNSON: Aye.

CHAIRMAN DEASON: All opposed nay. Nay.

MR. TWOMEY: Mr. Chairman, pardon me. Can we ask that either you make it clear in your vote that you are ordering the Company to establish a bond that would hold -- the customers would have to pay the subsidies whole if there is a reversal on appeal, or conversely that you make it clear that you accept that there is no way to make these customers whole, assuming a reversal on appeal, and that you're not going to do anything about it. I mean, it's not clear to me which way you come down on that. That you're going to accept the Company's argument that they will make all the customers whole on a revenue basis, but that the people that pay too much, if there is a reversal, it's too bad except on a going-forward basis. I'm asking you to make it clear that you're telling them they have to get that kind of bond, or make it clear that you're not.

MR. HOFFMAN: Mr. Chairman, let me object. I don't think Mr. Twomey is being very clear. I think that the Staff's recommendation is clear. And I think that we can have that -- we already have a bond on

file. We can get the nature of the bond changed to fit what is required in the Staff recommendation, and I think that that dollar amount will be sufficient to meet either consequence. We are sitting here speculating about what may happen on appeal. We simply don't know. I mean, I know the staff has estimated $3 million, but that is based on the rate design issue alone. I don't know what else Public Counsel may raise that may have a revenue requirement impact. And I think this is unnecessary, and I object to it, and I think it makes the issue more cloudy.

CHAIRMAN DEASON: Well, Mr. Hoffman, I think not only is it relevant, it is critical to know what the nature of the motion is and what is being done. Now, I'm not on the winning side of the motion, so I don't know how to clarify it, because I'm not even supporting it. If the Commissioners wish to clarify it, they will have the opportunity now.

COMMISSIONER CLARK: I have moved Staff recommendation. Now, the issue of whether or not a refund will be due to the customers I don't think is before us right now.

MS. BEDELL: What is before you is a decision about whether there is good and sufficient security for anything that may be coming down the pipeline.

COMMISSIONER CLARK: Now, will the bond cover that? Let me just ask the question. Without deciding the issue as to whether or not there will be a refund to only those customers who are overcharged, and not a making up of that revenue from the other customers. Let's assume that our order is that you will only refund to those who are overcharged. Will the bond cover that?

MS. BEDELL: Yes.

MR. WILLIS: Commissioners, we believe the bond will cover it. It's just like any rate case, it will have to be reviewed at the end of one year to see if -- you know, we don't know how long the appeal is going to be, but it will have been reviewed after one year, and if the appeal is not done, it will have to be up for whatever amount we believe it will have to be protected.

CHAIRMAN DEASON: Let me make sure that we are clear. What you're saying is that if that is the final decision, the bond is adequate?

MR. WILLIS: Yes.

CHAIRMAN DEASON: But that is not the position the company is arguing, they're saying it is not their belief they are putting themselves subject to that liability.

COMMISSIONER JOHNSON: I thought that point was made painfully clear what the Company thought, but Staff sufficiently satisfied me that it was something that we could make those customers whole, and perhaps that is something that we should definitely have written in the order.

MS. BEDELL: That is what we had in mind in terms of coming up with a dollar number. That is the direction we headed in to come up with some recommendation on a dollar amount. Mr. Chairman, we need to know if you are dissenting on Issue 2 only, or on Issue 2 and 3.

CHAIRMAN DEASON: Well, let's take a look at that.

MS. BEDELL: Issue 3 is Citrus County's motion for the penalties and the reduction in rates, refund of bills.

CHAIRMAN DEASON: Okay. We already disposed of Issue 1.

MS. BEDELL: Yes, sir.

CHAIRMAN DEASON: I'm dissenting on Issue 2, but I'm agreeing with Staff on Issue 3.

MS. BEDELL: Thank you.

MR. GROSS: This is an appealable order to the First District Court of Appeal, so we need an order so that we can avoid some of the problems we have had in

the past, and also the provisions in the bond are going to be of interest to the First District Court of Appeal as to whether there was an adequate bond in compliance with the Commission's rule. Even if it is determined to be mandatory, there is still that --

COMMISSIONER CLARK: Doesn't the bond have to cover the whole amount of the rate increase, so therefore it covers anything --

MR. HOFFMAN: Commissioner Clark, I think that every issue in the rate case is put at issue in the appeal, I think it would.

COMMISSIONER CLARK: All we need to do at this point is make sure that the total amount of the bond is sufficient to cover the total amount of the rate increase, because it's still at issue, and covered in that is the amount of any refund that would be due, if it is decided that a refund is due to those people who paid more under statewide rates than they would have paid under stand-alone rates. And it's my understanding from the Staff that it does, and that is what we need to decide today.

CHAIRMAN DEASON: And an order will be forthcoming, and it will describe what the Commission did.

MR. HOFFMAN: Thank you, Mr. Chairman.

MR. GROSS: Thank you.

CHAIRMAN DEASON: That disposes of Item 25A.

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