


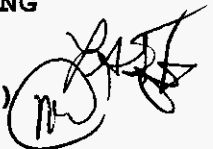
FLORIDA PUBLIC SERVICE COMMISSION

Gerald L. Gunter Building  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850

M E M O R A N D U M

November 14, 1995

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING

FROM: DIVISION OF LEGAL SERVICES (JAEGER)   
DIVISION OF WATER AND WASTEWATER (WILLIS) 

RE: UTILITY: SOUTHERN STATES UTILITIES, INC. (ORANGE-OSCEOLA UTILITIES, INC.)  
DOCKET NO. 950495-WS  
COUNTY: BRADFORD, BREVARD, CHARLOTTE, CITRUS, CLAY, COLLIER, DUVAL, HIGHLANDS, LAKE, LEE, MARION, MARTIN, NASSAU, ORANGE, OSCEOLA, PASCO, PUTNAM, SEMINOLE, ST. JOHNS, ST. LUCIE, VOLUSIA, AND WASHINGTON

CASE: APPLICATION FOR RATE INCREASE FOR ORANGE-OSCEOLA UTILITIES, INC. IN OSCEOLA COUNTY, AND IN BRADFORD, BREVARD, CHARLOTTE, CITRUS, CLAY, COLLIER, DUVAL, HIGHLANDS, LAKE, LEE, MARION, MARTIN, NASSAU, ORANGE, OSCEOLA, PASCO, PUTNAM, SEMINOLE, ST. JOHNS, ST. LUCIE, VOLUSIA, AND WASHINGTON COUNTIES BY SOUTHERN STATES UTILITIES, INC.

AGENDA: NOVEMBER 21, 1995 - REGULAR AGENDA - DECISION PRIOR TO HEARING - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: I:\PSC\LEG\WP\950495-E.RCM

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CASE BACKGROUND

Southern States Utilities, Inc. (SSU or utility), is a Class A utility that has water and wastewater facilities in 25 counties. On June 28, 1995, SSU filed an application with the Commission requesting increased water and wastewater rates for 141 service areas, pursuant to Section 367.081, Florida Statutes. SSU also requested an increase in service availability charges, pursuant to Section 367.101, Florida Statutes. On August 2, 1995, SSU

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completed the minimum filing requirements for a general rate increase, and that date was established as the official filing date for this proceeding.

On July 26, 1995, the Commission issued Order No. PSC-95-0901-PCO-WS that acknowledged the intervention of the Office of the Public Counsel (OPC). The Sugarmill Woods Civic Association, Inc., the Spring Hill Civic Association, Inc., and the Marco Island Civic Association, Inc., were also granted intervenor status by Order No. PSC-95-1034-PCO-WS, issued August 21, 1995 and Order No. PSC-95-1143-PCO-WS, issued on September 14, 1995, respectively. A technical hearing has been scheduled for January 29-31, and February 1, 2, 5, and 7 - 9, 1996.

The Commission recently reviewed the jurisdictional status of SSU's facilities throughout the state in Docket No. 930945-WS. In Order No. PSC-95-0894-FOF-WS, issued on July 21, 1995 (now on appeal), the Commission determined that SSU's facilities and land constituted a single system and that the Commission had jurisdiction over all of SSU's facilities and land throughout the state pursuant to Section 367.171, Florida Statutes.

In response to the mandate issued by the First District Court of Appeal and the reversal of portions of Order No. PSC-93-0423-FOF-WS, issued in Docket No. 920199-WS, the Commission issued Order No. PSC-95-1292-FOF-WS on October 19, 1995. By this order, the Commission ordered SSU to begin charging final rates based on a modified individual system basis (also known as modified stand alone).

On September 29, 1995, the Prehearing Officer issued the Order Establishing Procedure (Order No. PSC-95-1208-PCO-WS) in this docket. This order listed the dates for the filing of testimony and the service hearings, and confirmed that Order No. PSC-95-0943-PCO-WS would continue to govern discovery. On October 9, 1995, OPC filed a motion for reconsideration by the full Commission of the Order Establishing Procedure. In that motion, the OPC specifically requests that the Commission order the utility to send new notices and a new rate case synopsis to the customers. Further, OPC requests that customer service hearings be held anew and that the Commission refrain from setting a date for filing intervenor testimony until the Commission rules on OPC's six separate motions to postpone date for filing intervenor testimony. Also, OPC

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requests that the Commission lift the limit on discovery, currently set at 1000 interrogatories and 500 requests for production of documents.

On October 17, 1995, SSU filed its response and request for expedited disposition. On October 23, 1995, the Nassau County Customers of SSU (hereinafter referred to as Nassau customers), through counsel Arthur I. Jacobs, filed their Motion for Reconsideration of the Order Establishing Procedure. On November 7, 1995, the Nassau customers filed a motion to intervene. The motion has not yet been ruled upon and the time for filing responses to the motion to intervene has not expired. Accordingly, the Nassau customers are not recognized as a party in this case. However, their motion was almost identical to OPC's motion, except it did not refer to the due date for intervenor testimony nor the limits on discovery. By Order No. PSC-95-1258-PCO-WS, issued on October 13, 1995, the Prehearing Officer denied OPC's first and second motions to postpone date for filing of testimony. Also, by Order No. PSC-95-1321-PCO-WS, issued on October 31, 1995, the Prehearing Officer denied OPC's third motion to postpone date for filing of testimony.

At the November 7, 1995, Agenda Conference, the Commission directed staff to investigate the adequacy of the initial customer notice provided to SSU's customers and possible options for addressing the concerns raised by the parties about that notice. This recommendation addresses the motions for reconsideration of Order No. PSC-95-1208-PCO-WS, SSU's response thereto, and the Commission's questions at the November 7, 1995, Agenda Conference.

DISCUSSION OF ISSUES

**ISSUE 1:** Should the Commission allow oral argument on OPC's Motion for Reconsideration of Order No. PSC-95-1208-PCO-WS?

**RECOMMENDATION:** Yes. Oral argument, however, should be limited to five minutes for each side at the agenda conference in which the Commission considers the motion for reconsideration. (JAEGER)

**STAFF ANALYSIS:** On September 22, 1995, OPC filed a request that the Commission grant oral argument on all of its motions pending before the Commission in this Docket. While that motion was still pending, OPC, on October 9, 1995, filed its Motion For Reconsideration By The Full Commission of the Order Establishing Procedure, Order No. PSC-95-1208-PCO-WS. Then, four days later on October 13, 1995, the prehearing officer, citing Rule 25-22.058(1), Florida Administrative Code, issued Order No. PSC-95-1259-PCO-WS, which denied OPC's request that it be granted oral argument on all of its pending motions.

Rule 25-22.058(1), Florida Administrative Code, requires a request for oral argument to accompany the pleading and to "...state with particularity why oral argument would aid the Commission in comprehending and evaluating the issues before it." Although Staff believes that OPC has not complied with this rule, it, nevertheless, recommends that the Commission allow oral argument on OPC's motion for reconsideration, since this case has not been to hearing yet.

At the November 7th Agenda Conference, there was extensive discussion on several of OPC's motions to dismiss and in particularity on the adequacy of SSU's notice to the customers. At that Agenda Conference, the Commissioners were informed that OPC had also filed a motion for reconsideration of the Order Establishing Procedure based on these same perceived noticing problems and that staff was attempting to schedule that motion to be considered at the November 21st Agenda Conference.

Although the adequacy of the notice to customers was discussed at length, the Commission considered only the three motions to dismiss and whether the sanction of dismissal was warranted (decided that the sanction of dismissal was not warranted). However, the Commission did express a special interest in the

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motion for reconsideration and whether any further action should be taken even if that notice was legally sufficient. Because of the uniqueness of the situation, and the fact that this case has not yet proceeded to hearing, Staff believes that oral argument from the parties would be beneficial. Further, OPC had requested oral argument on all of its motions and this request was not denied until some 4 days after the motion for reconsideration was filed. Because this matter has not yet been to hearing, parties may participate at the Agenda Conference on this item. Therefore, Staff recommends that oral argument be allowed and be limited to five minutes for each side.

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**ISSUE 2:** Should OPC's Motion for Reconsideration of the Order Establishing Procedure, Order No. PSC-95-1208-PCO-WS, be granted?

**RECOMMENDATION:** No. OPC's motion for reconsideration should be denied. (JAEGER)

**STAFF ANALYSIS:** On October 9, 1995, OPC timely filed its Motion for Reconsideration by the full Commission of the Order Establishing Procedure, Order No. PSC-95-1208-PCO-WS. In its motion, OPC requests three separate actions. Accordingly, Staff's analysis is divided into three categories. The three sections are: 1) Rate Case Synopsis, Notice, and Customer Service Hearings; 2) Due Date for Intervenor Testimony; and 3) Limits on Discovery.

Rule 25-22.060(1), Florida Administrative code, permits a party who is adversely affected by an order of the Commission to file a motion for reconsideration of that order. The standard for reconsideration is as set out in Diamond Cab Co. of Miami v. King, 146 So. 2d 889 (Fla. 1962). In that case, the Florida Supreme Court stated that the purpose of a petition for rehearing is merely to bring to the attention of the trial court or the administrative agency some point which it overlooked or failed to consider when it rendered its order in the first instance, and it is not intended as a procedure for re-arguing the whole case merely because the losing party disagrees with the judgment. Id. at 891. In Stewart Bonded Warehouse, Inc. v. Bevis, 294 So. 2d 315, 317 (Fla. 1974), the Court found that the granting of a petition for reconsideration should be based on specific factual matters set forth in the record and susceptible to review. We have applied these standards in our review of OPC's motion.

#### Rate Case Synopsis, Notice, and Customer Service Hearings

According to OPC, the rate case synopsis, MFRs, and the notices are not clear; and, therefore, it is impossible for customers or other interested individuals to tell what SSU is requesting in this rate case. OPC argues that the customers have not been provided proper notice, and, consequently, do not know the extent of their exposure to higher rates in this case because SSU failed to disclose a known court decision about uniform rates to its customers in its notice. OPC alleges that the order establishing procedure "ignores the deficiencies of the notice already provided to customers" by SSU and "ignores the

representations made by Commissioners at various service hearings that new customer service hearings would be held." OPC requests that the Commission require the utility to send new notices. OPC further requests that the Commission set new service hearings after customers have been "provided adequate notice about the rates they may face as a result of this case." OPC requests that the new notice:

- (1) Advise customers of each system what their rates would be on a stand-alone basis and on a uniform rate basis if the company should receive its requested revenue increase. The notice should prominently advise customers that their rates could be the higher of stand-alone or uniform rates as a result of this case.
- (2) Require SSU to revise its rate case synopsis to provide both uniform rate and stand-alone rate and revenue requirement information for each system.
- (3) Advise customers that to the extent there are inconsistencies between the new notice and (a) the MFRs (b) the company's pre-filed testimony, and (c) the existing rate case synopsis available in each county, the new notice takes precedence.
- (4) Advise customers to disregard all prior notices provided by the company.

The main thrust of OPC's argument on this point appears to be that the synopsis, initial customer notice and notice of customer service hearings violate the requirements of Section 120.57(1)(b)2, Florida Statutes, and that they do not give the citizens fair notice of what is facing them, and that, therefore, there is no clear point of entry into the Section 120.57(1), Florida Statutes, process. OPC then cites two cases in support of their position, and analyze a third case relied on by SSU. These cases are: Totura v. Department of State, 553 So. 2d 272, 274 (Fla 1st DCA 1989); Guerra v. State, Dept. of Labor & Employment, 427 So. 2d

1098, 1101 n. 4 (Fla. 3rd DCA 1983); and the case relied on by SSU -- City of Plant City v. Mayo, 337 So. 2d 966 (Fla. 1976).

In its response, SSU argues that it is procedurally inappropriate for the Commission to address any of these matters on a motion for reconsideration. SSU argues that the Order Establishing Procedure merely incorporates the service hearing schedule previously established by Order No. PSC-95-1042-PCO-WS, issued August 21, 1995, and that the motion of the OPC must therefore be considered untimely. SSU also argues that OPC has already made the same argument in its Third Motion to Dismiss and in its Motion to Cap Rates and that this is an impermissible amendment of a prior pleading and should be stricken.

Substantively, SSU argues that OPC has failed to meet the applicable standard for granting reconsideration as set out in Diamond Cab. SSU also argues that it has met all the noticing requirements of Rule 25-22.0407(5) and (6), Florida Administrative Code, and that its notice gives its customers a clear point of entry to formal proceedings under Section 120.57(1), Florida Statutes. SSU then cites the following cases as supporting its position: Capeletti Brothers, Inc. v. State, Department of Transportation, 362 So. 2d 346, 348 (Fla. 1st DCA 1978); Gulf Coast Home Health Services of Florida, Inc. v. Department of Health and Rehabilitative Services, 515 So. 2d 1009 (Fla. 1st DCA 1987); and City of Plant City v. Mayo, 337 So. 2d 966 (Fla. 1976).

SSU also argues that the noticing provisions of Section 120.57 (1)(b)2, Florida Statutes, do not apply to the initial customer notice and notices of service hearing required by Commission rules. SSU states that the notice required by this section is to parties, is for the final evidentiary hearing and is the notice sent to parties.

By letter dated September 18, 1995, pursuant to Commission rule, staff approved SSU's initial customer notice. A review of the initial customer notice shows that it contains everything required by Rule 25-22.0407(5)(b), Florida Administrative Code, to include a comparison of current rates and charges (uniform rates) and the proposed new rates and charges (also uniform rates). The current rates at the time of issuance of the initial customer notice were uniform rates, and SSU is requesting uniform rates.



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The Order Establishing Procedure requires the utility to comply with all requirements of Rule 25-22.0407, Florida Administrative Code. Rule 25.22.0407(4), Florida Administrative Code, requires a utility to place a copy of its rate case synopsis at all locations where copies of the MFRs and petition were placed within 30 days after the official filing date. The rule also describes what the rate case synopsis must contain. A review of SSU's rate synopsis shows that the utility has included a summary of the section of the MFRs showing a comparison of the present and proposed rates and charges (was attached as Appendix A), a statement of the general reasons for the rate request, a statement of the major issues (included the level of rate relief, rate structure, and weather normalization), a description of the ratemaking process and the time schedule established for the case, and the location where complete MFRs are available. Therefore, staff believes that the synopsis complies with Rule 25-22.0407(4)(c), Florida Administrative Code.

Staff believes that the utility has complied with the Commission's Rules and that customers have received legal notice as required by Rules 25-22.0407 (5) and (6), Florida Administrative Code. The OPC has not shown that the order contains any error or mistake of fact or law. Rather they are arguing about the utility's compliance with that order. Accordingly, OPC's motion for reconsideration should be denied in this regard.

Due Date for Intervenor Testimony

In its motion for reconsideration, OPC requests that the Commission refrain from setting a date for filing intervenor testimony until the Commission rules on OPC's motions to postpone testimony. In the Order Establishing Procedure, the Prehearing Officer established November 20, 1995, as the date for the filing of intervenor testimony. In its response, SSU asserts that OPC's request is moot and unnecessary as to the Order Establishing Procedure and premature as to the impending Prehearing Officer rulings on OPC's outstanding motions. To date, OPC has filed ten separate motions to compel discovery and to postpone filing of intervenor testimony. Each motion to postpone testimony is combined with a motion to compel discovery. As grounds for the motions to postpone testimony, OPC has alleged that the utility's nonresponsive answers and their untimely answers prevent OPC from adequately preparing testimony. To date, the Prehearing Officer has ruled on six of the motions. By Order No. PSC-95-1394-PCO-WS, issued November 9, 1995, the Prehearing Officer extended the time for filing intervenor testimony to November 27, 1995. OPC's request is not one that is appropriate for reconsideration. Accordingly, staff recommends that it should be denied. OPC is merely rearguing the allegations made to the Prehearing Officer in all of the motions to postpone testimony.

Limits on Discovery

On July 18, 1995, OPC filed a Motion to Permit Additional Interrogatories. SSU filed its response to this motion on July 31, 1995, and specifically requested that discovery be limited to 500 interrogatories, including subparts.

After considering OPC's motion and SSU's response, the Prehearing Officer issued her Order Granting Motion to Permit Additional Interrogatories and Order on Discovery, Order No. PSC-95-0943-PCO-WS, on August 4, 1995. In that order, recognizing the complexity of the rate case and the large number of facilities, the Prehearing Officer limited discovery to 1,000 interrogatories, and 500 requests for production of documents. OPC did not seek reconsideration of that order. The Order Establishing Procedure, Order No. PSC-95-1208-PCO-WS, issued on September 29, 1995, then merely stated that the order on discovery shall govern in this docket.

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OPC then filed its Motion for Reconsideration of the Order Establishing Procedure on October 9, 1995, and requested that the limits on discovery be lifted. OPC argues that since their clients pay the rate case expense, SSU should not complain of the expense. Also, OPC argues that there are 152 distinct systems and that the limitation amounts to the equivalent of less than 10 discovery requests per system. Therefore, OPC requests that this limitation be lifted, and that they be allowed to proceed with discovery until a party brings an issue about discovery to the Prehearing Officer. As of October 24, 1995, the OPC had submitted 320 interrogatories and 274 requests for production. In its response, SSU asserts that the Order Establishing Procedure makes no modification to the order on discovery and the time for reconsideration of the order on discovery has passed.

First, OPC's request for reconsideration relating to the discovery limit is not timely. As stated earlier, the discovery limit was established in Order No. PSC-95-0943-PCO-WS, issued August 4, 1995. Second, Florida Rule of Civil Procedure 1.340(a) provides in pertinent part that: "The interrogatories shall not exceed 30, including all subparts, unless the court permits a larger number on motion and notice and for good cause." A review of Florida Rule of Civil Procedure 1.340(a) shows that the burden was on the person requesting the interrogatories to demonstrate good cause why there should be additional interrogatories permitted. To now allow unlimited interrogatories and require SSU to seek a protective order if it thought the discovery unduly burdensome would seem to turn this requirement on its end. Therefore, staff believes that no mistake of law has been made. Accordingly, staff recommends that OPC's motion for reconsideration should be denied in this regard.

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**ISSUE 3:** Should the Commission grant Nassau County Customers' Motion for Reconsideration by the Full Commission of the Order Establishing Procedure, Order No. PSC-95-1208-PCO-WS?

**RECOMMENDATION:** No. The motion for reconsideration should be denied. (JAEGER)

**STAFF ANALYSIS:** As stated earlier, the Order Establishing Procedure was issued on September 29, 1995. The Nassau Customers filed their motion for reconsideration of Order No. PSC-95-1208-PCO-WS on October 23, 1995. SSU responded to this motion on November 2, 1995. In its response, SSU notes that the Nassau Customers have not been granted party status and argues that any of their motions should not be considered until they are granted party status. However, if the motion is considered, SSU argues that it is untimely, and should be denied and stricken. SSU is correct that the Nassau Customers have not been granted party status. In fact, the Nassau Customers filed their motion to intervene on November 7, 1995.

Pursuant to Rule 25-22.038(2), Florida Administrative Code, a motion for reconsideration of an order by the prehearing officer must be filed within 10 days after issuance of the order (by October 9, 1995). Therefore, the Nassau County Customers' motion is untimely. Accordingly, staff recommends that it be denied.

Further, the Nassau Customers' motion is almost identical to the first section of OPC's motion which argued that the synopsis and initial customer notice were inadequate. All of the arguments have been addressed in different portions of this recommendation. Based on the above, staff recommends that the Nassau County Customers' Motion for Reconsideration of the Order Establishing Procedure be denied.

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**ISSUE 4:** Should the Commission on its own motion require SSU to supplement or revise its initial customer notice?

**RECOMMENDATION (PRIMARY):** Yes, the Commission should require the initial customer notice to be supplemented as set forth in Attachment A. Further, a copy of the supplemental notice should be mailed to each customer within 14 days of the Commission vote and should be attached to each synopsis. No additional customer service hearings should be required, but the parties may move for leave to file supplemental prefiled testimony if any customer comments so require it. Such supplemental testimony shall be strictly designed to respond only to the customer comments. (JAEGER, WILLIS)

**RECOMMENDATION (ALTERNATIVE):** Yes, the Commission should require the initial customer notice to be supplemented as set forth in Attachment A. Further, a copy of the supplemental notice should be mailed to each customer within 14 days of the Commission vote and should be attached to each synopsis. Further, except for the service hearings held in Hernando and Hillsborough/Polk Counties, the service hearings already held should be rescheduled. The December 7, 1995, service hearing for Osceola County should be cancelled and rescheduled at a later time. The November 27, 1995 and November 28, 1995 customer service hearings should be held and rescheduled. Accordingly, the technical hearing should be postponed. (JAEGER, WILLIS)

**STAFF ANALYSIS (PRIMARY):** On April 6, 1995, the Commission's decision in Order No. PSC-93-0423-FOF-WS in Docket No. 920199-WS was reversed in part and affirmed in part by the First District Court of Appeal. Citrus County v. Southern States Utilities, Inc., 656 So. 2d 1307 (Fla. 1st DCA 1995). A mandate was issued by the First District court of Appeal on July 13, 1995.

When SSU submitted its draft of the rate case synopsis and of the notice, neither SSU nor the Staff knew how the Commission would vote in order to comply with the Court's mandate. Therefore, it was unclear what rates would be finally approved by the Commission in Docket No. 920199-WS. At the time the synopsis and initial customer notice were approved, SSU was (and still is) charging uniform rates. On September 26, 1995, the Commission voted to require the utility to implement the modified stand alone rates based on the evidence in the record in Docket No. 920199-WS. The

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order (Order No. PSC-95-1292-FOF-WS) memorializing this vote was issued on October 19, 1995. However, SSU has moved for reconsideration of that order and has indicated that it might appeal that order, and as of the date of this recommendation, has still not implemented those rates.

In the Plant City case, in response to the argument that a disseminated notice was inadequate with regard to a particular issue decided by the Commission, the Florida Supreme court wrote as follows:

[W]e must agree . . . that more precision is probably not possible and in any event not required. To do so would either confine the Commission unreasonably in approving rate changes, or require a pre-hearing procedure to tailor the notice to the matters which would later be developed. We conclude, therefore, that the Commission's standard form of notice for rate hearings imparts sufficient information for interested persons to avail themselves of participation.

337 So. 2d at 971 (emphasis added). As suggested by the court in Plant City, a pre-hearing procedure to sculpt the perfect notice is impossible as a practical matter and would unreasonably confine the Commission. The purpose of the customer notice, the court stated, is to notify interested persons to avail themselves of participation, and SSU's notice fulfills this purpose.

However, with the issuance of Order No. PSC-95-1208-PCO-WS, on October 19, 1995 (ordered SSU to establish modified stand-alone rates), some of SSU's customers will have increased rates if those rates are implemented. These rates may possibly be further increased if SSU's current rate case application is granted, and the Commission decides to stay with the modified stand-alone rates, rather than the proposed uniform rate structure contained in SSU's filing or some other rate structure.

Concerns have been raised regarding whether or not the notice adequately outlines the true impact to the customers if a rate structure other than the one requested by the utility is adopted by the Commission. Staff has prepared a supplemental notice with a form for customer comment which will address those concerns (see attachment "A"). Staff recommends that SSU be required to mail

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this supplemental notice to all of its customers within 14 days of the Commission vote.

Notwithstanding Staff's belief that the original notice was legally adequate, Staff does believe that the Commission has the option of requiring the utility to supplement the notice with more information. However, Staff does not believe that the customer service hearings have to be reaccomplished, and postponement of the hearing is not necessary.

Staff believes that the customers have been adequately informed of the issues, and note that the nine customer service hearings held to date have been basically well attended. The Osceola customer service hearing was one of the smaller hearings (approximately 20 customers), and it has already been rescheduled due to other noticing problems. Therefore, Staff does not believe it is required or that it would be cost effective to start the customer service hearings all over. The costs of scheduling commissioners, staff, court reporters, and the costs to the parties would all be greatly increased.

Further, if the technical hearing was rescheduled, it appears that the next available block of time would not be until May 6, 1996 through May 18, 1996 (including Saturdays but not including May 7th for an Agenda Conference). Pursuant to Section 367.081(6), Florida Statutes, and with a 30-day extension stipulated to by SSU, the new rates or all or any portion thereto not consented to may be placed into effect by SSU under a bond, escrow, or corporate undertaking subject to refund as of May 2, 1996 (Staff has previously determined that SSU can not support a corporate undertaking). Therefore, if the technical hearing was rescheduled to the period May 6 through May 18th, SSU could implement its rates prior to this hearing.

Allowing several days for the transcripts and making briefs due two weeks after the transcripts (current Case Assignment and Scheduling Record -- CASR), briefs would be filed around June 5, 1996. The staff recommendation on the revenue requirements would not be due until about July 15, 1996 and the staff recommendation on rates would not be due until about July 22, 1996 (using same times as set out in the current CASR). This would make the Special Agendas on revenue requirements and rates take place sometime in

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late July or early August, with a final order due out in late August or early September.

However, Section 367.081(6), Florida Statutes, specifically states: "The commission shall take final action on the docket and enter its final order within 12 months of the official date of filing." If the service hearings are redone, it would appear that it would be impossible to even issue the final order prior to August 2, 1996, and this does not take into account that there will almost certainly be petitions for reconsideration.

Therefore, for this alternative, Staff recommends that, while the customers should be provided this additional notice, the customer service hearings already held should not be rescheduled and the hearing should not be postponed.

**STAFF ANALYSIS (ALTERNATIVE):** The only difference between this recommendation and the primary recommendation is that, for this alternative, staff is recommending that those customers who have already had a service hearing before timely reception of the supplemental notice should be allowed the opportunity to address the Commission at another customer service hearing. Although the scheduling of at least nine additional customer service hearings will be a "herculean" and costly task, staff believes that this is an option.

As of November 9, 1995, the Commission has held 9 customer service hearings, and two more are scheduled for November 27 and 28, 1995. However, two of the customer service hearings already held were for Hernando and Hillsborough/Polk Counties, and pursuant to the Commission decision (Order No. PSC-95-1385-FOF-WS) at the Hernando County customer service hearing on October 13, 1995, the rates for the facilities in those counties are no longer being considered. If the Commission did decide that issuance of this supplemental notice would require that those customers who have already had customer service hearings be allowed another customer service hearing, then, unless some customer service hearings could be consolidated, the Commission would have to redo at least nine customer service hearings.

Upon review of the Commission calendar, it appears that it would not be possible to schedule that many service hearings prior to the technical hearing now scheduled to begin on January 29,



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1996. Therefore, if the Commission did decide to reschedule the customer service hearings, it would appear that the technical hearing would have to be rescheduled.

Staff believes that the time in January and February, now set aside for the technical hearing, should now be used for the additional customer service hearings, and that the days in May should now be used for the final technical hearing. Pursuant to Section 367.081(6), Florida Statutes, the utility may place its rates into effect after 8 months following the date of filing (SSU has extended this period by one month), and so, as of May 2, 1996, if the Commission has not issued its final order, SSU may place the new rates, or any portion thereof not consented to, into effect under a bond, escrow, or corporate undertaking subject to refund upon notice to the Commission and upon filing the appropriate tariffs (Staff has determined that SSU could not support a corporate undertaking).

Even recognizing that the Commission may go beyond both the 8-month and 12-month deadlines set out above, Staff still believes that this is an option. In the case of Lomelo v. Mayo, 204 So. 2d 550 (Fla. 1st DCA 1967), the First District Court of Appeal considered the language in what was then Section 367.14(4), Florida Statutes, which stated in pertinent part:

said hearing shall be held and the order entered thereon within one hundred eighty days from the date the public utility filed with the Commission its written notice showing the change or changes proposed. (emphasis added)

Although noting that the mandatory word "shall" was used, the Third District Court of Appeal found that the language was only directory and was designed only to further the orderly conduct of the Commission's business and protect the interest of the utility. See also Hun v. Goode, 353 So. 2d 169, 171 (Fla 3d DCA 1978), and Schneider v. Gustafson Industries, Inc., 139 So. 2d, 423, 425 (Fla. 1962), wherein the court said:

[M]andatory language has in a number of cases been construed as directory, dependent upon the history and subject matter of the particular provision, and as a general rule,

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statutes setting the time when a thing is to be done are regarded as merely directory, where no provision restraining the doing of it after that time is included and the act in question is not one upon which court jurisdiction depends.

Section 367.14(4), Florida Statutes, has now been replaced by Section 367.081(6), Florida Statutes, and the utilities are protected even further by being given the authorization to implement all or any portion of their proposed rates after the expiration of 8 months from the date of filing. Such implementation would be under a bond, escrow, or corporate undertaking subject to refund.

While recognizing that the legislature wanted the Commission to take final action within 12 months, staff believes this is an extraordinary case and that going beyond the 12-month period may be required. Therefore, the Staff recommends that the Commission should require the initial customer notice to be supplemented as set forth in Attachment A. Further, a copy of the supplemental notice should be mailed to each customer within 14 days of the Commission vote and should be attached to each synopsis. Further, except for the service hearings held in Hernando and Hillsborough/Polk Counties, the service hearings already held should be rescheduled. The December 7, 1995, service hearing for Osceola County should be cancelled and rescheduled at a later time. The November 27, 1995 and November 28, 1995 customer service hearings should be held and rescheduled. Accordingly, the technical hearing should be postponed. (JAEGER, WILLIS)

DOCKET NO. 950495-WS  
NOVEMBER 14, 1995

**ISSUE 5:** Should this Docket be closed?

**RECOMMENDATION:** No. (JAEGER)

**STAFF ANALYSIS:** This docket should remain open for the continued processing of this case.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION  
DOCKET NO. 950495-WS

Supplemental Notice to Customers of Application

Application by Southern States Utilities, Inc.  
for rate increase and increase in service availability charges  
for Orange-Osceola Utilities, Inc. in Osceola County  
and in Bradford, Brevard, Charlotte, Citrus, Clay,  
Collier, Duval, Highlands, Lake, Lee, Marion,  
Martin, Nassau, Orange, Osceola, Pasco, Putnam,  
Seminole, St. Johns, St. Lucie,  
Volusia, and Washington Counties.

DATED: \_\_\_\_\_

By notice dated September 12, 1995, Southern States Utilities, Inc. (SSU or utility) provided a notice to its customers pursuant to Commission rules which set forth the purpose of its rate increase application, an initial schedule for customer service hearings, locations for public inspection of the utility's petition and rate case synopsis, a case schedule and an outline of the utility's current and requested rates. Concerns have been raised regarding whether or not the notice adequately outlined the true impact to the customers if a rate structure other than the one requested by the utility is adopted by the Commission. Accordingly, the Commission has instructed the utility to provide this supplemental notice for the purpose of illustrating the potential impact of other rate structures on the customers.

Customers should be aware that the Commission is not bound by the utility's proposals and will give consideration to applying revenue increases, if any are authorized, in the manner the Commission deems just, fair, and reasonable. Customers should also be aware that this notice is for illustrative purposes only. The notice cannot provide the customers with the exact rate at this time because a decision on SSU's application has not yet been made. A decision on the final rates is dependent upon the amount of revenue the Commission grants to the utility and the rate structure chosen. Finally, customers should be aware that the final rates could be higher or lower than those shown on the rate schedule herein.

Summary of September 12, 1995 Notice

On June 28, 1995, SSU filed an application for increased water and wastewater rates with the Commission. After deficiencies were met, the official date of filing was established as August 2, 1995.

In its application, the utility has requested additional revenues of \$11,791,242 for their water operations and \$6,346,260 for their wastewater operations. These requested increases result in total company consolidated revenues of \$37,950,163 for water and \$27,352,361 for wastewater. This equates to an increase in water revenue of 45.08% and an increase in wastewater revenue of 30.21%.

The utility has requested that the Commission approve uniform rates for all water service areas which receive service from conventional treatment facilities. Two of SSU's service areas, Marco Island and Burnt Store, receive service using an advanced treatment technology known as reverse osmosis. SSU has proposed that these two service areas constitute a separate rate classification. Therefore, SSU proposes that these two service areas have their own uniform reverse osmosis water rates. SSU proposes that their wastewater customers be charged a uniform rate. SSU also proposes that the Commission authorize the utility to implement a monthly weather normalization clause adjustment. This mechanism provides for monthly adjustments to the gallonage charge, up or down, to reflect variations in customer consumption.

#### Interim Rates

The utility also proposed interim rates to be collected while its request for final rates was pending. The Commission, on October 6, 1995, denied the utility's request for interim rates. On November 13, 1995, the utility filed a new interim request. The Commission has not yet ruled on this request for interim. Pursuant to Section 367.082, Florida Statutes, the Commission must rule on the utility's request for interim rates within 60 days of the date the request is filed. If approved, interim rates would become effective on the date revised tariff sheets are stamped and approved by the Commission. Interim rates are collected subject to refund with interest. The proposed interim rates are outlined in the schedule included herein.

#### Docket No. 920199-WS

By Order No. PSC-93-0423-FOF-WS, issued March 22, 1993, in Docket No. 920199-WS, the Commission granted increased rates for 127 of SSU's service areas, included in this docket, based on a uniform rate structure. That Order was appealed to the First District Court of Appeal. On April 6, 1995, the Commission's decision regarding the uniform rate structure in Order No. PSC-93-0423-FOF-WS was reversed and remanded by the First District Court of Appeal. Mandate was issued by the First District Court of Appeal on July 13, 1995.

In complying with the mandate, the Commission voted to approve a different rate structure for SSU. In doing that, the Commission had to choose a rate structure supported by the evidence presented in Docket No. 920199-WS that was consistent with the Court's opinion. By Order No. PSC-95-1292-FOF-WS, issued October 19, 1995, the Commission approved a modified stand alone rate structure. On a going-forward basis, the new rate structure may result in higher rates for some of SSU's customers. The modified stand alone rate structure has not yet been implemented because SSU has requested reconsideration of the Commission's decision and if reconsideration is denied, SSU may appeal the order to the First District Court of Appeal. If you are a customer affected by Docket No. 920199-WS, you are still paying the previously approved uniform rate. The potential impact of the utility's requested revenue increase using the modified stand alone rate structure is shown on the schedule included herein.

#### Rate Schedule

The schedule included in this supplemental notice lists the utility's current rates, the utility's second interim requested rates, potential impact of a stand alone rate, potential impact of a modified stand alone rate, and the utility's proposed uniform rate.

#### How to Contact the Commission

For your convenience, a customer comment sheet has been attached to this supplemental notice. Your written comments regarding the utility and the proposed rates, and requests to be placed on the mailing list for this case, may be directed to the following address:

Director, Division of Records and Reporting  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850

All correspondence should refer to "Docket No. 950495-WS: Application by Southern States Utilities, Inc. for rate increase and increase in service availability charges for Orange-Osceola Utilities, Inc. in Osceola County and in Bradford, Brevard, Charlotte, Citrus, Clay, Collier, Duval, Highlands, Lake, Lee, Marion, Martin, Nassau, Orange, Osceola, Pasco, Putnam, Seminole, St. Johns, St. Lucie, Volusia, and Washington Counties."

If you wish to contact the Commission regarding complaints about service, you may call the Commission's Division of Consumer Affairs at the following toll-free number: 1-800-342-3552.

This notice was prepared by Commission Staff and approved by the Commission for distribution by the utility to its customers.

How to Contact the Office of Public Counsel

Chapter 350, Florida Statutes, provides that it is the duty of the Public Counsel to provide legal representation for the people of the state in proceedings before the Commission. Any utility customer that wishes to contact the Florida Office of Public Counsel for assistance may do so at 1-800-342-0222.

SOUTHERN STATES UTILITIES, INC.  
 NOTICE TO CUSTOMERS OF APPLICATION - DOCKET NO. 950495-WS  
 "XYZ" SERVICE AREA  
 "XYZ" COUNTY  
 RATE SCHEDULE - MONTHLY WATER RATES

ATTACHMENT A  
 PAGE 1 OF 3

CLASS METER SIZE	PRESENT RATES (UNIFORM- 920199-WS)	PROPOSED INTERIM RATES	POTENTIAL		PROPOSED UTILITY FINAL (UNIFORM)
			STAND ALONE RATES	MODIFIED STAND ALONE	

WATER

Residential, Multi-  
 Family, & General Service

**Base Facility Charge:**

3/4 X 5/8" meter	\$ x.xx	\$ x.xx	\$ x.xx	\$ x.xx	\$ x.xx
3/4" meter	\$ x.xx	\$ x.xx	\$ x.xx	\$ x.xx	\$ x.xx
1" meter	\$ x.xx	\$ x.xx	\$ x.xx	\$ x.xx	\$ x.xx
2" meter	\$ x.xx	\$ x.xx	\$ x.xx	\$ x.xx	\$ x.xx
3" meter	\$ x.xx	\$ x.xx	\$ x.xx	\$ x.xx	\$ x.xx
4" meter	\$ x.xx	\$ x.xx	\$ x.xx	\$ x.xx	\$ x.xx
5" meter	\$ x.xx	\$ x.xx	\$ x.xx	\$ x.xx	\$ x.xx
6" meter	\$ x.xx	\$ x.xx	\$ x.xx	\$ x.xx	\$ x.xx
8" meter	\$ x.xx	\$ x.xx	\$ x.xx	\$ x.xx	\$ x.xx
10" meter	\$ x.xx	\$ x.xx	\$ x.xx	\$ x.xx	\$ x.xx

<b>Gallonage Charge:</b> (per 1,000 gallons)	\$ x.xx	\$ x.xx	\$ x.xx	\$ x.xx	\$ x.xx
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SOUTHERN STATES UTILITIES, INC.  
 NOTICE TO CUSTOMERS OF APPLICATION - DOCKET NO. 950495-WS  
 "XYZ" SERVICE AREA  
 "XYZ" COUNTY  
 RATE SCHEDULE - MONTHLY WASTEWATER RATES

CLASS METER SIZE	PRESENT RATES (UNIFORM- 920199-WS)	PROPOSED INTERIM RATES	POTENTIAL		PROPOSED UTILITY FINAL (UNIFORM)
			STAND ALONE RATES	MODIFIED STAND ALONE	

WASTEWATER

Residential Service

**Base Facility Charge:**

All meter sizes	\$ x.xx	\$ x.xx	\$ x.xx	\$ x.xx	\$ x.xx
<b>Gallonge Charge:</b> (per 1,000 gallons)	\$ x.xx	\$ x.xx	\$ x.xx	\$ x.xx	\$ x.xx
Wastewater Cap:	6,000	6,000	6,000	6,000	6,000
All Excess Gallons	\$ x.xx	\$ x.xx	N/A	N/A	N/A

SOUTHERN STATES UTILITIES, INC.  
 NOTICE TO CUSTOMERS OF APPLICATION - DOCKET NO. 950495-WS  
 "XYZ" SERVICE AREA  
 "XYZ" COUNTY  
 RATE SCHEDULE - MONTHLY WASTEWATER RATES

ATTACHMENT A  
 PAGE 3 OF 3

CLASS METER SIZE	PRESENT RATES (UNIFORM- 920199-WS)	PROPOSED INTERIM RATES	POTENTIAL		PROPOSED UTILITY FINAL (UNIFORM)
			STAND ALONE RATES	MODIFIED STAND ALONE	
<b>WASTEWATER</b>					
General Service & Multi-Family Service					
<b>Base Facility Charge:</b>					
3/4 X 5/8" meter	\$ x.xx	\$ x.xx	\$ x.xx	\$x.xx	\$ x.xx
3/4" meter	\$ x.xx	\$ x.xx	\$ x.xx	\$x.xx	\$ x.xx
1" meter	\$ x.xx	\$ x.xx	\$ x.xx	\$x.xx	\$ x.xx
2" meter	\$ x.xx	\$ x.xx	\$ x.xx	\$x.xx	\$ x.xx
3" meter	\$ x.xx	\$ x.xx	\$ x.xx	\$x.xx	\$ x.xx
4" meter	\$ x.xx	\$ x.xx	\$ x.xx	\$x.xx	\$ x.xx
5" meter	\$ x.xx	\$ x.xx	\$ x.xx	\$x.xx	\$ x.xx
6" meter	\$ x.xx	\$ x.xx	\$ x.xx	\$x.xx	\$ x.xx
8" meter	\$ x.xx	\$ x.xx	\$ x.xx	\$x.xx	\$ x.xx
10" meter	\$ x.xx	\$ x.xx	\$ x.xx	\$x.xx	\$ x.xx
<b>Gallonge Charge:</b> (per 1,000 gallons)	\$ x.xx	\$ x.xx	\$ x.xx	\$ x.xx	\$ x.xx

3582

