

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

JANUARY 25, 1996

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYO)

FROM: DIVISION OF WATER & WASTEWATER (WILLIS)
DIVISION OF LEGAL SERVICES (JAEGER) *[Handwritten initials]*

RE: DOCKET NO. 950495-WS - SOUTHERN STATES UTILITIES, INC. -
APPLICATION 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.
COUNTY: SEE ABOVE

AGENDA: FEBRUARY 6, 1996 - REGULAR AGENDA - DECISION PRIOR TO
HEARING - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: I:\PSC\LEG\WP\950495RC.RCM

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

CASE BACKGROUND

Southern States Utilities, Inc. (SSU or utility) is a Class A utility, which provides water and wastewater service to 152 service areas in 25 counties. On June 28, 1995, SSU filed an application for approval of interim and final water and wastewater rate increases for 141 service areas in 22 counties, pursuant to Sections 367.081 and 367.082, Florida Statutes. The utility also requested an increase in service availability charges, approval of an allowance for funds used during construction (AFUDC), and an allowance for funds prudently invested (AFPI).

On August 1, 1995, the Commission determined that SSU's application was deficient because it did not include information for Hernando, Hillsborough and Polk Counties in its filing. On August 2, 1995, the utility filed an amended application which included facilities in those counties. That date has been established as the official date of filing.

On November 7, 1995, the Commission issued Order No. PSC-95-1383-FOF-WS, which memorialized a decision made at an October 13, 1995 service hearing. This Commission decision determined that the rates of the facilities of SSU located in the counties of Hernando, Hillsborough, and Polk were not subject to change in this rate proceeding.

The utility's initial interim request was based on a projected test year ending December 31, 1995. The utility requested interim rates which would produce additional revenues of \$7,428,460 for water operations and \$4,920,387 for wastewater operations.

The Office of the Public Counsel (OPC), the Sugarmill Woods Civic Association, Inc. (Sugarmill Woods), the Spring Hill Civic Association, Inc. (Spring Hill), the Marco Island Civic Association, Inc. (Marco Island), the Amelia Island Community Association, et al., the Concerned Citizens of Lehigh Acres (Lehigh Acres), and Harbour Woods Civic Association (Harbour Woods) have all intervened in this docket.

On November 1, 1995, the Commission issued Order No. PSC-95-1327-FOF-WS which denied SSU's original request for interim rate relief, suspended the proposed final rates, and allowed the utility to file another petition for interim rates. SSU based its original interim revenue request on a projected 1995 test year. The projected year 1995 was not based on the historical 1994 balances escalated forward but on a separate construction and financial budget. One reason the Commission denied SSU's original interim request was because the utility's 1995 budget was not reasonable to

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determine interim rates as it was not self-explanatory and included discretionary projections. The Commission was also concerned about approving interim rates using a projected test year because this methodology was untested and contained an apparent mismatch between rate base and other components. SSU filed its supplemental petition for interim revenue relief on November 13, 1995.

The utility submitted supplemental information to permit an analysis of uniform, stand alone, and modified stand alone rate design alternatives for the years 1994 (interim), 1995 (interim), and 1996 (final). It should be noted, that SSU is not requesting any change in the revenue requirements originally requested in the MFRs. The supplemental information allows the Commission to provide interim rate relief based on either a 1994 or 1995 interim test year. SSU's primary request in its supplemental petition is consistent with its original request, that the interim test year should be the projected twelve months ending December 31, 1995, utilizing a total jurisdictional uniform revenue requirement and a uniform percentage increase applied to all plants. The utility also provided information for 1994 and 1995 for each individual service area, which would facilitate a determination of interim rate relief based on 1994 or 1995 under alternative rate designs.

On December 18, 1995, OPC filed its Motion To Reestablish Official Filing Date and SSU timely filed its Response in Opposition on December 26, 1995. This recommendation addresses OPC's Motion To Reestablish Official Filing Date and SSU's response.

DISCUSSION OF ISSUES

ISSUE 1: Should OPC's Motion to Reestablish Official Filing Date be granted?

RECOMMENDATION: No. (JAEGER)

STAFF ANALYSIS: In its Motion to Reestablish the Official Filing Date, the OPC notes that the Director of the Division of Water and Wastewater originally determined the official filing date to be August 2, 1995, but that SSU then filed 39 supplemental volumes of Minimum Filing Requirements (MFRs) on November 13, 1995, when it refiled its interim request. OPC merely cites Rule 25-30.025, Florida Administrative Code (rule on Official Rate of Filing), and states "obviously the director did not know at that time that the minimum filing requirements were not complete." OPC does argue that it is entitled to have the complete case filing of a utility on or before the official filing date, but presents no legal argument, or justification for reestablishing the official date of filing. OPC then concludes that the official filing date must be changed to a date no earlier than the date of this supplemental filing.

In its response, SSU argues that the Legislature gave the Commission exclusive authority to enforce its MFR rules, and that OPC does not have standing to challenge the establishment of the official filing date. Also, SSU argues that if OPC's Motion to Dismiss SSU's Request for an Interim Increase in Rates was denied by the Commission as "an inappropriate motion", then OPC's Motion to Reestablish the Official Filing Date based on SSU's Supplemental Petition for Interim Revenue Relief must also be inappropriate. SSU further points out that Order No. PSC-95-1327-FOF-WS, authorizing SSU to file again for interim relief, says nothing about reestablishing the official filing date if SSU did choose to file supplemental information on interim rates.

On several occasions, the Commission has considered the question of whether to reestablish the official date of filing (restart the clock). In Order No. 18335, issued October 22, 1987, in Docket No. 870239-WS, the Commission considered the rate application of General Development Utilities, Inc., (GDU) Silver Springs Shores Division. In that case, GDU had failed to include in its MFRs the cost of Storage Station C, and attempted to correct this omission over 2 months later by filing its prefiled direct testimony. This correction would have greatly increased both the rate base and the revenue requirement.

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Both Commissioners assigned to the case were concerned about this late change. One Commissioner thought that the "8-month clock" should either start over as of the date of filing of the new information, or, referring to the test year approval letter, the new information should be stricken. The Chairman concurred and stated that the case before them was not correct and complete as filed. They therefore, ordered that the hearing be continued until such time as GDU "either corrects its minimum filing requirements or its prefiled testimony." Order, at 87 FPSC 10:358.

In Docket No. 891114-WS, application of Sailfish Point Utility Corporation (utility), a panel of two Commissioners dealt with both an untimely notice problem and a filing of revised MFR schedules (with the testimony of Frank Seidman) which resulted in a revised revenue requirement. In issuing Order No. 23123, on June 26, 1990, the Commission found that the utility had "basically filed a new rate case when it filed its testimony." In that Order, the Commissions stated, "[W]e find it appropriate to dismiss Sailfish Point's application upon both OPC's and our own motion." Order, at 90 FPSC 6:437.

In Docket No. 900329-WS, a rate case involving SSU, the MFRs were accepted as complete on September 29, 1990, but the utility then filed, on October 15, 1990, an amended petition which reflected changes made to its MFRs on September 28, 1990. Based on these amendments, the official date of filing was changed to October 15, 1990. Order, at 90 FPSC 6:437.

In all of the above instances, the utility had made what appear to be material errors in their initial filing which had to be corrected. In the case at hand, the Director of the Division of Water and Wastewater determined in accordance with Rule 25-30.025 Florida Administrative Code, that SSU's initial filing was complete as of August 2, 1995 (SSU had responded to all deficiencies as had been noted by the Division of Water and Wastewater).

However, with the Mandate issued by the First District Court of Appeal on July 13, 1995, the Commission issued Order No. PSC-95-1292-FOF-WS (in Docket No. 920199-WS) on October 19, 1995 which set modified stand alone rates for SSU's systems. Further, by Order No. PSC-95-1327-FOF-WS, issued on November 1, 1995, in Docket No 950495-WS, the Commission denied the utility's request for interim rate relief. The Commission concluded that SSU had not established a prima facie entitlement that it was earning outside the range of reasonableness on its rate of return, and denied the request for interim rates. However, recognizing that the circumstances in this case are unusual and unique, the Commission specifically authorized

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SSU to file another petition for interim rates. This SSU did on November 13, 1995.

In the November 13, 1995, filing, SSU did not change its request in any regard. Staff does not believe that the filing on November 13, 1995, should affect the official date of filing. SSU is not making any corrections to its rate base or the requested revenue requirement. Also, SSU is still requesting uniform rates. Therefore, SSU's position and requests have been consistent and its filing on November 13, 1995, was merely in response to Order No. PSC-95-1327-FOF-WS which had denied interim rates, and was not an attempt to correct or change the information found in the MFRs for a permanent rate increase. OPC has not demonstrated anything to the contrary. Therefore, Staff recommends that the Commission should not reestablish the official date of filing.

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ISSUE 2: Should this docket be closed?

RECOMMENDATION: No. (JAEGER)

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