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**RUTLEDGE, ECENIA, UNDERWOOD, PURNELL & HOFFMAN**

PROFESSIONAL ASSOCIATION  
ATTORNEYS AND COUNSELORS AT LAW

STEPHEN A. ECENIA  
KENNETH A. HOFFMAN  
THOMAS W. KONRAD  
R. DAVID PRESCOTT  
HAROLD F. X. PURNELL  
GARY R. RUTLEDGE  
R. MICHAEL UNDERWOOD  
WILLIAM B. WILLINGHAM

POST OFFICE BOX 551, 32302-0551  
215 SOUTH MONROE STREET, SUITE 420  
TALLAHASSEE, FLORIDA 32301-1841

TELEPHONE (904) 681-6788  
TELECOPIER (904) 681-6515

GOVERNMENTAL CONSULTANTS:  
PATRICK R. MALOY  
AMY J. YOUNG

**ORIGINAL  
FILE COPY**

February 19, 1996

Ms. Blanca S. Bayo, Director  
Division of Records and Reporting  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Betty Easley Conference Center  
Room 110  
Tallahassee, Florida 32399-0850

Re: Docket No. 920199-WS

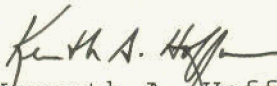
Dear Ms. Bayo:


Enclosed herewith for filing in the above-referenced docket on behalf of Southern States Utilities, Inc. ("SSU") are an original and fifteen copies of SSU's Notice of Supplemental Authority.

A copy of this letter is enclosed. Please mark it to indicate that the original was filed and return the copy to me. Copies have been served to the parties shown on the attached Certificate of Service.

**ACK**  \_\_\_\_\_  
**AFA** 4 \_\_\_\_\_  
**APP** \_\_\_\_\_  
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**SEC** 1 \_\_\_\_\_  
**WAS** \_\_\_\_\_  
**OTH** \_\_\_\_\_

Sincerely,

  
Kenneth A. Hoffman

**RECEIVED & FILED**  
  
**EPSC BUREAU OF RECORDS**

DOCUMENT NUMBER-DATE  
01934 FEB 19 96  
FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application of )  
Southern States Utilities, )  
Inc. and Deltona Utilities, )  
Inc. for Increased Water and )  
and Wastewater Rates in Citrus, )  
Nassau, Seminole, Osceola, Duval, )  
Putnam, Charlotte, Lee, Lake, )  
Orange, Marion, Volusia, Martin, )  
Clay, Brevard, Highlands, )  
Collier, Pasco, Hernando, and )  
Washington Counties. )  
\_\_\_\_\_ )

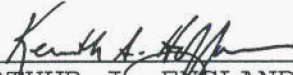
Docket No. 920199-WS

Filed: February 19, 1996

SSU'S NOTICE OF SUPPLEMENTAL AUTHORITY

Southern States Utilities, Inc. ("SSU"), by and through its undersigned counsel, hereby files pages 3-14 of the transcript from Item No. 50 at the February 6, 1996 Agenda Conference concerning the Office of Public Counsel's Motion to Reestablish Official Filing Date in Docket No. 950945-WS as supplemental authority in support of SSU's Motion for Reconsideration of Order No. PSC-95-1292-FOF-WS in the above-styled docket.

Respectfully submitted,

  
\_\_\_\_\_  
ARTHUR J. ENGLAND, JR., ESQ.  
Greenberg, Traurig, Hoffman,  
Lipoff, Rosen & Quentel, P.A.  
1221 Brickell Avenue  
Miami, Florida 33131-3260  
(305) 579-0605

KENNETH A. HOFFMAN, ESQ.  
WILLIAM B. WILLINGHAM, ESQ.  
Rutledge, Ecenia, Underwood,  
Purnell & Hoffman, P.A.  
P. O. Box 551  
Tallahassee, FL 32302-0551  
(904) 681-6788

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

and

BRIAN P. ARMSTRONG, ESQ.  
Southern States Utilities, Inc.  
1000 Color Place  
Apopka, Florida 32703  
(407) 880-0058

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing SSU's Notice of Supplemental Authority was furnished by facsimile transmission and/or U. S. Mail to the following this 19th day of February, 1996:

Harold McLean, Esq. (\*)  
Office of Public Counsel  
111 West Madison Street  
Room 812  
Tallahassee, FL 32399-1400

Lila Jaber, Esq. (\*)  
Division of Legal Services  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Room 370  
Tallahassee, FL 32399-0850

Mr. Harry C. Jones, P.E. President  
Cypress and Oak Villages Association  
91 Cypress Boulevard West  
Homosassa, Florida 32646

Michael S. Mullin, Esq.  
P. O. Box 1563  
Fernandina Beach, Florida 32034

Larry M. Haag, Esq.  
County Attorney  
111 West Main Street #B  
Inverness, Florida 34450-4852

Susan W. Fox, Esq. (\*)  
MacFarlane, Ferguson  
P. O. Box 1531  
Tampa, Florida 33601

Michael B. Twomey, Esq. (\*)  
Route 28, Box 1264  
Tallahassee, Florida 31310

Michael A. Gross, Esq.  
Assistant Attorney General  
Department of Legal Affairs  
Room PL-01, The Capitol  
Tallahassee, FL 32399-1050

By:   
KENNETH A. HOFFMAN, ESQ.

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION  
TALLAHASSEE, FLORIDA

IN RE: Application for rate increase and increase in  
service availability charges by Southern States Utilities,  
Inc. 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.

DOCKET NO. 950495-WS



BEFORE:

CHAIRMAN SUSAN F. CLARK  
COMMISSIONER J. TERRY DEASON  
COMMISSIONER JULIA L. JOHNSON  
COMMISSIONER DIANE K. KIESLING  
COMMISSIONER JOE GARCIA

PROCEEDING:

AGENDA CONFERENCE

ITEM NUMBER:

50\*\*

DATE:

February 6, 1996

PLACE:

4075 Esplanade Way, Room 148  
Tallahassee, Florida

REPORTED BY:

JANE FAUROT, RPR  
Notary Public in and for the  
State of Florida at Large

JANE FAUROT, RPR  
P.O. BOX 10751  
TALLAHASSEE, FLORIDA 32302  
(904) 379-8669

1 PARTICIPATING:

2 Charles Beck, representing OPC  
3 Kenneth Hoffman and Brian Armstrong, representing  
4 SSU.

5 \* \* \* \* \*

6 STAFF RECOMMENDATIONS

7 Issue 1: Recommendation that OPC's Motion to Reestablish  
8 Official Filing Date be denied.

9 Issue 2: Recommendation that this docket remain open.

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CHAIRMAN CLARK: Item 50.

MR. JAEGER: Commissioners, Item Number 50 is Staff's recommendation concerning the Office of Public Counsel's motion to reestablish an official date of filing and SSU's response.

CHAIRMAN CLARK: Any questions?

COMMISSIONER KIESLING: Move it.

MR. JAEGER: Although we did not specifically address oral argument, Staff recommends that each side be given five minutes as has been being done in all SSU.

CHAIRMAN CLARK: I'm unclear. Was there a request for oral argument?

MR. JAEGER: There is not a request for oral argument, but this has not gone to hearing and they have been routinely granting the five minutes to each side.

CHAIRMAN CLARK: Go ahead, Mr. Beck.

MR. BECK: Thank you, Chairman Clark. I will try to be brief.

CHAIRMAN CLARK: Thank you.

MR. BECK: The Director of the Division of Water and Wastewater made a determination that August 2nd was the official filing date in this case. More than three

1 months later, Southern States comes in and files 39  
2 volumes of MFRs. And I think you will recall at one  
3 agenda they were piled up over here. You could see the  
4 volume of the material they filed. Now, a portion of  
5 those documents, and just a portion dealt with interim.  
6 And it was in response to your order on the interim  
7 rates. But a substantial portion of the MFRs had  
8 absolutely nothing to do with the interim. It had  
9 forecasted 1996 data on all of their systems. We are  
10 required to respond to what the company filed as MFRs  
11 and that should be the starting date for the case.  
12 What will the Commission do if tomorrow they come in  
13 with another 39 volumes, or if they come in in April  
14 with another 39 volumes? Our time to respond has to  
15 start -- there has to be some definite point when the  
16 information stops and we start to respond. Since they  
17 determined to come in, and not in response to a  
18 Commission order, they did it on the forecasted '96  
19 data in November, since they filed 39 volumes of MFRs,  
20 that should be the beginning of the case.

21 Thank you.

22 CHAIRMAN CLARK: Thank you, Mr. Beck. Mr.  
23 Armstrong or Mr. Hoffman.

24 MR. HOFFMAN: Madam Chairman, I will be very  
25 brief. We filed the supplemental petition for interim



1 revenue relief in response to the authorization to do  
2 so granted by the Commission. It includes detailed  
3 information on the 1994 interim test year period. Mr.  
4 Beck is correct, there was some information on final  
5 rates, but that information was provided in response to  
6 Public Counsel's request that the company make sure  
7 that the customers had all information available  
8 concerning the different ranges of rate structure.  
9 None of the filings in any manner changed the revenue  
10 requirement as originally requested.

11 CHAIRMAN CLARK: Questions, Commissioners?

12 COMMISSIONER DEASON: Let me ask Mr. Hoffman a  
13 question. You're saying that the additional  
14 information dealing with '96 projections that you filed  
15 subsequent to the August 2nd date was in response to a  
16 request from Public Counsel's Office and was not as a  
17 bolster to your position concerning your original  
18 revenue requirement request?

19 MR. HOFFMAN: Right. It was not to bolster it,  
20 Commissioner Deason. Public Counsel had been filing a  
21 number of motions to dismiss throughout this case  
22 criticizing the company for not providing enough  
23 information about what our proposed rates would be  
24 under different rate structures. So when we filed that  
25 supplemental filing, in addition to filing the

1 information on the interim, we filed additional  
2 information on the proposed final rates which outlined  
3 essentially what the different rates would be under  
4 different rate structures. But we did not in any  
5 manner change the amount of our requested final revenue  
6 requirement.

7 COMMISSIONER DEASON: But the additional  
8 information did contain information concerning the  
9 veracity of your '96 projections, is that correct?

10 Is that your understanding, Mr. Beck?

11 MR. BECK: It broke it down on a system-by-system  
12 basis on their forecasted '96 data. And this is  
13 information -- we never asked them to file MFRs, that  
14 was their decision to file that as MFRs. And I assume  
15 as in all cases that they will move them into evidence  
16 at the beginning of the case. We have to respond to  
17 that.

18 COMMISSIONER DEASON: Mr. Hoffman.

19 MR. HOFFMAN: Commissioner Deason, Mr. Armstrong  
20 tells me that the information was rate structure  
21 information and was provided in response to, you know,  
22 the Commission's request and Public Counsel request  
23 that we make every bit of information available which  
24 explains and supports what the different rates would be  
25 under the different rate structures.

1           COMMISSIONER DEASON: You're saying that  
2 additional information had nothing to do with the  
3 calculation of revenue requirements?

4           MR. HOFFMAN: It in no manner changed the total  
5 requested revenue requirement.

6           COMMISSIONER DEASON: I'm not talking about  
7 changing it, bolstered your calculations, what you  
8 claimed the revenue requirements to be.

9           MR. HOFFMAN: No. No, I don't think it did.

10          CHAIRMAN CLARK: Okay. Any further questions on  
11 Item 50?

12          COMMISSIONER DEASON: Before we vote, Madam  
13 Chairman, I need to raise a question. And it's  
14 something that fits into the question of interim, and I  
15 think this is the appropriate time to do it. I hate to  
16 take the time given the hour, but obviously we can't  
17 talk about things outside of a forum like this.

18          We have just concluded a number of public hearings  
19 and we have two more to go, and during this latest  
20 round of hearings one of the things that has been of  
21 great concern to the customers is the level of interim  
22 rates. And one of the responses that we give, and  
23 rightfully so, is that interim rates are subject to  
24 refund, which they are. But one thing that causes me  
25 some concern is that due to the court's decision and

1           our interpretation of the court's decision and then our  
2           ultimate decision to implement a modified stand-alone  
3           rate structure for interim, there are a number of  
4           customers whose rates under that rate structure are  
5           much higher than they are under a different rate  
6           structure, under a uniform rate structure.

7           My concern is that for those customers who do have  
8           extremely high rates that they may be taking false  
9           comfort in our assertion that those rates are subject  
10          to refund. I think it's more accurate to say that the  
11          company's revenue requirement is subject to refund if  
12          the ultimate revenue requirement we determine in total  
13          company dollars is less than what was granted on an  
14          interim basis. But it's not the rates themselves that  
15          are subject to refund. For example, if we determine a  
16          revenue requirement that is even greater than what we  
17          gave on interim, and we go to a different rate  
18          structure, it's very possible that some of these  
19          customers that have extremely high interim rates are  
20          going to see a rate reduction, but they are not going  
21          to see a refund of dollars. And I guess I'm pointing  
22          this out.

23          I want to, first of all, confirm that with Staff,  
24          that that is the situation, and then make sure that all  
25          my fellow Commissioners understand that and that we are

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1 not taking false comfort in talking to these customers  
2 that if their final rate is less than their interim  
3 rate there is going to be a refund, because that may  
4 not be the case. And, first of all, am I correct on  
5 that?

6 MR. WILLIS: You're correct, Commissioner Deason,  
7 it's the revenue requirement that's subject to refund,  
8 not rates themselves.

9 COMMISSIONER DEASON: And I'm not so sure there is  
10 anything we can do about it. In fact, I can't. I  
11 can't move to reconsider our interim decision, because  
12 I voted against it on that rate structure issue  
13 concerning the notice to customers of what the  
14 potential rate would be and what the final rate was.  
15 But I just wanted to make sure that we are all  
16 understanding what the framework is that we are working  
17 under, and I just felt compelled to bring that out.

18 COMMISSIONER GARCIA: Let me then ask Staff, what  
19 would happen if, let's say, we approved no rate  
20 increase, how would that revenue be returned to the  
21 customers?

22 MR. WILLIS: That's simple. If you approve no  
23 revenue increase then all revenue would be refunded in  
24 excess of what should have been collected, and that  
25 would mean that you would refund back to the level of

1 rates -- you would refund back to the level of rates  
2 that were approved in 920199. You would have to stay  
3 with the modified stand-alone rate structure. You  
4 would refund to each individual customer the additional  
5 revenue that they paid over and beyond that rate  
6 structure approved in 920199.

7 MR. JAEGER: Or the rate structure approved for  
8 the few systems that weren't under 920199, is that  
9 correct?

10 MR. WILLIS: That's true.

11 CHAIRMAN CLARK: Isn't that where the real issue  
12 comes in? I recall when we voted on interim rates  
13 there was a couple of base-facility charges that were  
14 extreme. But as I understood from the Staff, that, at  
15 least in one case, that was because they were not part  
16 of the other rate case, and you felt compelled that  
17 because interim rates must be used, the same  
18 adjustments as in the last case, that they couldn't be  
19 brought in line with what was done in terms of the  
20 modified stand-alone.

21 MR. WILLIS: That's correct.

22 CHAIRMAN CLARK: And Commissioner Deason is right,  
23 it is probably given them a false sense of security to  
24 say that it will be refunded. I think that for the  
25 remaining cases that need customer hearings, I probably

1 need to make it clear that if we find they were not  
2 entitled to that entire revenue, there may be a refund,  
3 but that doesn't mean if your rate is less that you  
4 will, in fact, get a refund.

5 MR. WILLIS: Correct.

6 COMMISSIONER DEASON: I'm not being critical of  
7 what is being told to the customers, I just --

8 CHAIRMAN CLARK: I didn't take it that way. I  
9 took it as a helpful note.

10 COMMISSIONER DEASON: Just so that we all, Staff  
11 and Commissioners, all of us understand what  
12 potentially could happen when it comes time to -- if  
13 there is going to be any interim refund, and I don't  
14 know if there is or not -- that there may be some  
15 customers that think they are entitled to a refund and  
16 they won't be a refund forthcoming.

17 CHAIRMAN CLARK: Yes. I didn't take that as a  
18 criticism. I took that as sort of we need to be aware  
19 of that and make sure other people are aware of it  
20 because, goodness knows, this is a case where we need  
21 to be as precise as possible.

22 COMMISSIONER JOHNSON: Staff, could you explain to  
23 me again how the refund would actually work if we found  
24 that -- if we were going to change the revenue  
25 requirement, even though there may be a particular

1 customer whose rates might go down, they may not be  
2 subject to the refund. How would it work? I don't  
3 understand how it would work.

4 MR. WILLIS: Any refund would have to be  
5 calculated based on the refund period, and I believe  
6 that any refund would have to be based upon the rates  
7 that were in effect during that period. If the  
8 Commission said overall they should get a 10 percent  
9 refund, you would have to go back and apply it back to  
10 the rates that were in effect during the interim  
11 period. It wouldn't be based upon the new rate  
12 structure. If the Commission changes rate structure,  
13 you wouldn't base your refund on the new rate  
14 structure, it would have to be based on the rate  
15 structure in effect during the interim period.

16 COMMISSIONER JOHNSON: And then just do a  
17 percentage based upon --

18 MR. WILLIS: Normally, it's a percentage decrease.  
19 That would only apply to the -- in this case, we would  
20 have to go back and figure out how we would apply the  
21 percentage decrease because this was a modified  
22 stand-alone rate structure which means you do have some  
23 which are capped, some which are not capped. You have  
24 some which aren't included in the modified stand-alone  
25 rate structure which are pure stand-alone rates. So



1 everybody's refund would be based upon exactly --

2 COMMISSIONER JOHNSON: Okay, I understand.

3 MR. WILLIS: It is intricately tied to the rate  
4 structure.

5 COMMISSIONER DEASON: But if it is based upon a  
6 percentage of the rates that they had paid during that  
7 interim period, assuming final revenue requirements are  
8 less than interim revenue requirements. But it is very  
9 possible that if the final revenue requirement is more  
10 than interim -- well, we know there would be no refund  
11 then, but it's very possible, especially for those  
12 systems who are on a strict stand-alone, not a capped  
13 stand-alone, those systems that were not part of the  
14 127 the last time, those systems that have extremely  
15 high rates right now, if we go to a capped stand-alone,  
16 they are probably going to see a rate reduction. If we  
17 go to a uniform, they are going to see a rate  
18 reduction, but they are not going to see any refund of  
19 interim. And that's kind of a unique situation. And a  
20 lot of these customers are going to come into these  
21 hearings and complaining of a \$100 a month water and  
22 wastewater bills, we are telling them, "Well, there may  
23 be a refund." And, true, there may be. But at the  
24 same time there may not be. And they may see a  
25 substantial reduction in their monthly rates that they

1 are paying for this period and there may not be a  
2 refund during the interim.

3 MR. WILLIS: There will not be a refund based on a  
4 change in rate structure.

5 COMMISSIONER DEASON: Right. And it's just  
6 another complication of a very complicated case.

7 MR. WILLIS: Correct.

8 CHAIRMAN CLARK: We have Item 50 before us now.  
9 Is there a motion on Item 50?

10 COMMISSIONER KIESLING: Move it.

11 CHAIRMAN CLARK: Is there a second?

12 COMMISSIONER JOHNSON: Second.

13 THE COURT: All those in favor say aye.

14 COMMISSIONER DEASON: Before we vote, let me say  
15 that I'm going to vote with the motion, and it's based  
16 upon the representation that this is rate structure  
17 information that was filed to give the Commission all  
18 the necessary information to implement the court's  
19 decision on an interim basis. So let me say that if  
20 during the litigation of this case it comes to light  
21 that there is information that was filed in this  
22 subsequent filing that is being used to bolster the  
23 company's case on the total revenue requirements, I  
24 will look very unfavorably upon that, and would  
25 consider favorably a motion to not allow that evidence

1 in the record.

2 COMMISSIONER GARCIA: Mr. Beck, what would be the  
3 date that you wanted to move back to?

4 MR. BECK: November 13th, the day they filed the  
5 39 volumes.

6 COMMISSIONER GARCIA: I will just state this, and  
7 Mr. Hoffman can take it, or the company can take it. I  
8 would agree with Commissioner Deason on this. And if  
9 this is something that the company can give a little  
10 bit of leeway on because I think it benefits all the  
11 parties involved in getting more information out there  
12 and giving more time to something -- I guess Pandora's  
13 box was already opened a long time ago with this case.  
14 And if it's something that gives the company and the  
15 citizens of this state more time to ponder the issues,  
16 I would suggest to the company, and clearly I'm no one  
17 to tell the company, but I would tell you that if it is  
18 found later on that that is the case, that is not the  
19 case of what the company is reporting now, I would also  
20 look at it very unfavorably in terms of allowing that  
21 information.

22 CHAIRMAN CLARK: Okay. There has been a motion  
23 and a second. All those in favor say aye.

24 COMMISSIONER GARCIA: Aye.

25 COMMISSIONER JOHNSON: Aye.

1 COMMISSIONER KIESLING: Aye.

2 COMMISSIONER DEASON: Aye.

3 CHAIRMAN CLARK: Aye. Opposed, nay. Thank you,  
4 Mr. Beck.

5 Thank you, Mr. Hoffman and Mr. Armstrong.  
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CERTIFICATE OF REPORTER

STATE OF FLORIDA )  
COUNTY OF LEON )

I, JANE FAUROT, Court Reporter, do hereby certify that the foregoing proceedings was transcribed from cassette tape, and the foregoing pages numbered 1 through 16 are a true and correct record of the proceedings.

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, nor relative or employee of such attorney or counsel, or financially interested in the foregoing action.

DATED THIS 19th day of February, 1996.

*Jane Faurot*

JANE FAUROT, RPR  
P.O. Box 10751  
Tallahassee, Florida 32302  
(904) 379-8669

FLORIDA PUBLIC SERVICE COMMISSION  
Capital Circle Office Center, 2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850

M E M O R A N D U M

March 4, 1996

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING

FROM: DIVISION OF LEGAL SERVICES (JABER, DAVIS) *[Signature]*  
DIVISION OF WATER AND WASTEWATER (WILLIS, CHASE, RENDELL) *[Signature]*

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: MARCH 5, 1996 - REGULAR AGENDA - PARTIES MAY PARTICIPATE

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. 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. 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

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Order on Reconsideration, Order No. PSC-93-1598-FOF-WS, was issued on November 2, 1993. On November 19, 1993, the Office of Public Counsel (OPC) filed its notice of appeal.

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., 656 So. 2d 1307 (Fla. 1st DCA 1995). A mandate was issued by the First District Court of Appeal on July 13, 1995. SSU sought discretionary review by the Florida Supreme Court. The Commission filed a Notice of Joinder and Adoption of SSU's Brief. On October 27, 1995, the Supreme Court denied jurisdiction.

On October 19, 1995, Order No. PSC-95-1292-FOF-WS was issued, Order Complying with Mandate, Requiring Refund, and Disposing of Joint Petition. By that Order, the Commission ordered SSU to implement a modified stand alone rate structure, develop rates based on a water benchmark of \$52.00 and a wastewater benchmark of \$65.00, and to refund accordingly.

On November 3, 1995, SSU filed a Motion for Reconsideration of Order No. PSC-95-1292-FOF-WS. OPC, Citrus County, Spring Hill Civic Association (Spring Hill), and Sugarmill Woods Civic Association (Sugarmill Woods) filed responses to SSU's motion. Spring Hill is not a party in this docket.

The Commission considered the utility's motion for reconsideration and various other pleadings filed by the parties at the February 20, 1996, Agenda Conference. The Commission denied SSU's motion for reconsideration and disposed of all outstanding motions filed in this docket. The order memorializing the Commission's vote is due to be issued on March 11, 1996. On February 29, 1996, the Supreme Court of Florida issued its opinion in GTE Florida, Inc. v. Clark, No. 85,776 (Fla SCT. Feb. 29, 1996), which may have an impact on the Commission's decision in this case.

DISCUSSION OF ISSUES

**ISSUE 1:** What impact, if any, does the Supreme Court's February 29, 1996, opinion in the GTE case have on the Commission's decision regarding the remand in this docket?

**RECOMMENDATION:** The Commission should issue an order which bifurcates its February 20, 1996 decision regarding reconsideration matters as set forth below. The Commission should delay consideration of whether, on its own motion, to require backbilling until briefs are filed by the parties regarding their view of whether the GTE decision is applicable to the Commission's remand decision. All parties listed below should be given an opportunity to file briefs limited to this point as set forth below within 10 days of the Court's opinion becoming final. (JABER, DAVIS)

**STAFF ANALYSIS:** The parties involved in this docket, SSU, Sugarmill Woods, Citrus County and OPC filed pleadings in this docket related to reconsideration. Those matters were all considered at the February 20, 1996, Agenda Conference. At that agenda conference, the Commission voted to deny petitions to intervene filed by Putnam County and the City of Keystone Heights, granted Sugarmill Woods' motion to strike certain affidavits, denied Sugarmill Woods' motion to strike portions of SSU's motion for reconsideration, denied in part and granted in part SSU's motion for reconsideration, and denied SSU's motion to file a reply. As stated in the background, the order memorializing the Commission's vote is due to be issued on March 11, 1996.

On February 29, 1996, the Supreme Court of Florida rendered its opinion in the matter of GTE Florida Inc. v. Clark, No. 85,776 (Fla SCT. Feb. 29, 1996). The GTE opinion may have an impact on the Commission's original decision in this docket regarding compliance with the First District Court of Appeal's opinion in the SSU case. In the GTE case, the Supreme Court has reversed the Commission's order implementing the GTE remand. The Court has mandated that GTE be allowed to recover its erroneously disallowed expenses through the use of a surcharge. In its opinion, the Court states that imposition of a surcharge to recover the previously disallowed expenses would not constitute retroactive ratemaking. Further, the Court states that it views "... utility ratemaking as a matter of fairness. Equity requires that both ratepayers and utilities be treated in a similar matter." Upon reviewing the opinion, Staff believes that this raises a question of whether the Court's opinion requires the Commission to allow SSU to backbill



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the customers who paid less under the uniform rate structure than they would pay under the modified stand alone rate structure. Because the order on reconsideration is due to be issued on March 11, 1996, Staff believes it is important to bring this matter to the Commission's attention as quickly as possible.

However, Staff believes the GTE opinion has no impact on the Commission's decision to order SSU to make refunds. Therefore, Staff recommends that the Commission issue an order which memorializes its decision on the refund. Further, Staff recommends that the Commission should delay consideration of whether, on its own motion, to require backbilling until briefs are filed by the parties regarding their view of whether the GTE decision is applicable to the Commission's remand decision. Staff believes that the Commission should have input from the parties on this matter through the filing of briefs. Accordingly, Staff recommends that the Commission allow parties to file briefs within ten days of the Court's opinion becoming final. If no party to the GTE case asks for rehearing, the opinion becomes final on March 15, 1996. If a party does ask for rehearing, briefs will not be necessary pending the Court's final decision. The specific question to be briefed is: **Whether the Supreme Court's February 29, 1996, decision in the GTE case requires the backbilling of customers in the SSU case who paid less under the uniform rate structure than they would pay under the modified stand alone rate structure.**