

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

FEBRUARY 22, 1996

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

FROM: DIVISION OF LEGAL SERVICES (CAPELESS) *PSC*
DIVISION OF WATER & WASTEWATER (WILLIS) *m*

RE: DOCKET NO. 950495-WS - 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

AGENDA: MARCH 5, 1996 - REGULAR AGENDA - MOTION FOR RECONSIDERATION - PARTICIPATION IS LIMITED TO COMMISSIONERS AND STAFF

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: I:\PSC\LEG\WP\SSUREC03.RCM *95049503.RCM*

CASE BACKGROUND

Southern States Utilities, Inc. (SSU or utility) is a Class A utility which provides water and wastewater service to service areas in 25 counties. On June 28, 1995, SSU filed an application with the Commission requesting increased water and wastewater rates for 141 services areas, pursuant to Section 367.081, Florida Statutes. SSU also requested an increase in service availability charges, pursuant to Section 367.101, Florida Statutes, an allowance for funds used during construction (AFUDC), and an allowance for funds prudently invested.

On July 26, 1995, the Commission acknowledged the intervention of the Office of the Public Counsel (OPC) by Order No. PSC-95-0901-PCO-WS. The Commission granted intervention to: the Sugarmill Woods Civic Association, Inc., (Sugarmill Woods) and the Spring Hill Civic Association, Inc., (Spring Hill) by Order No. PSC-95-1034-WS, issued August 21, 1995; the Marco Island Civic Association, Inc., (Marco Island) by Order No. PSC-95-1143-WS,

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issued September 14, 1995; the Concerned Citizens of Lehigh Acres by Order No. 96-PSC-0089-PCO-WS, issued January 17, 1996; and the Harbor Woods Civic Association, Inc., by Order No. 96-PSC-0090-WS, also issued January 17, 1996.

On October 9, 1995, SSU filed an objection to, among other things, Interrogatory No. 241 from OPC's Seventh Set of Interrogatories, along with a motion for protective order. OPC did not file a response to the motion. By Order No. PSC-95-1503-CFO-WS, issued December 5, 1995, among other things, the Prehearing Officer overruled SSU's objection and directed the utility to respond to Interrogatory No. 241 within fifteen days of the date of the order. On December 15, 1995, SSU filed a Motion for Reconsideration of Order No. PSC-95-1503-CFO-WS, requesting that the Commission reconsider and withdraw the portion of the order that pertains to Interrogatory No. 241. SSU did not file a request for oral argument on the motion, nor did OPC file a response to the motion. This recommendation addresses SSU's motion for reconsideration.

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DISCUSSION OF ISSUES

ISSUE 1: Should SSU's Motion for Reconsideration of Order No. PSC-95-1503-CFO-WS be granted?

RECOMMENDATION: No, SSU's motion for reconsideration should be denied because SSU has failed to meet the standard for reconsideration. Order No. PSC-95-1503-CFO-WS does not contain a mistake of fact or law. Oral argument should not be heard on this motion as it was not requested and is not necessary. However, staff recommends that the Commission acknowledge that SSU has served a partial response to Interrogatory No. 241 on OPC, and that because OPC has not indicated otherwise by way of a response to the instant motion for reconsideration, it appears that OPC is satisfied with that response. (CAPELESS)

STAFF ANALYSIS: On October 9, 1995, SSU filed an objection to Interrogatory No. 241 from OPC's Seventh Set of Interrogatories, as well as an objection to certain of OPC's document requests, and a motion for protective order. By Interrogatory No. 241, OPC requested the following information:

Please explain the accounting treatment of the Lehigh [e]scrow funds on both the books of SSU and Lehigh Corporation and their parent companies. Identify any accounts and the amounts on the Company's books which relate to this escrow fund. Provide the same information for Lehigh Corporation and its parents. Please explain why the entire amount of these escrowed funds should not be considered CIAC.

SSU objected to this interrogatory to the extent it solicited detailed accounting information from the books and records of Lehigh Corporation and its parents (Lehigh), arguing that it does not have possession, custody or control over the books and records of affiliated companies, and that it can only state an understanding or belief of the pertinent Lehigh booking entries. OPC did not file a response to the objection or to the motion, nor did it file a motion to compel a response to this discovery request.

By Order No. PSC-95-1503-CFO-WS, issued December 5, 1995, among other things, the Prehearing Officer overruled SSU's objection to Interrogatory No. 241 and directed the utility to respond to that interrogatory within fifteen days of the date of the order. On December 15, 1995, SSU filed the instant Motion for Reconsideration of Order No. PSC-95-1503-CFO-WS, requesting that

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the Commission reconsider and withdraw that portion of the order which pertains to Interrogatory No. 241.

According to Rule 25-22.0376(5), Florida Administrative Code, oral argument on a motion for reconsideration may be granted at the Commission's discretion. However, because SSU did not request oral argument, and because staff believes that oral argument is not necessary in order for the Commission to fully review the motion, staff recommends that oral argument not be heard on this motion.

Rule 25-22.0376(1) Florida Administrative Code, permits a party who is adversely affected by an order of a prehearing officer 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. Staff has applied these standards in our review of SSU's motion.

As grounds for its motion for reconsideration, SSU states that on December 14, 1995, counsel for OPC informed counsel for SSU that OPC did not want, and would not move to compel SSU to provide, a response to Interrogatory No. 241, as directed by the order. According to SSU, counsel for OPC also stated that OPC had not expected a ruling on SSU's objection to Interrogatory No. 241 because OPC did not move to compel an answer to that interrogatory. Moreover, SSU states that it served a response to Interrogatory No. 241 on OPC on November 6, 1995, and that it now appears that OPC was satisfied with that response notwithstanding SSU's limited objection. SSU argues that OPC effectively withdrew the objectionable portion of Interrogatory No. 241, and that disposition of the objection thereto was never necessary. According to SSU, no dispute existed regarding Interrogatory No. 241 and the issue should have been deemed moot.

Staff notes that a dispute indeed existed regarding Interrogatory No. 241, which the Prehearing Officer resolved by way of Order No. PSC-95-1503-CFO-WS. SSU created that dispute when it filed its objection to the interrogatory along with a motion for protective order. The Prehearing Officer was not informed of the

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dispute resolution until SSU so advised the Commission by way of the instant motion for reconsideration. Therefore, the Prehearing Officer acted appropriately upon the information that she had before her at the time of her ruling. Because SSU has not demonstrated that the Prehearing Officer made a mistake of fact or law in her ruling as required by Diamond Cab, staff recommends that the Commission deny SSU's motion for reconsideration.

However, Staff notes that SSU states that it believed it necessary to file the instant motion so that it would not later be found in violation of a discovery order for failure to provide the required information to OPC. Staff recommends that for purposes of the record, the Commission should acknowledge that SSU has indicated that it has served a partial response to Interrogatory No. 241 on OPC, and that because OPC has not indicated otherwise by way of a response to the instant motion for reconsideration, it appears that OPC is satisfied with that response.

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ISSUE 2: Should this docket be closed?

RECOMMENDATION: No, this docket should remain open in order to process the utility's application. (CAPELESS)

STAFF ANALYSIS: This docket should remain open in order to process the utility's application.