

LAW OFFICES

McWHIRTER, REEVES, MCGLOTHLIN, DAVIDSON, RIEF & BAKAS, P.A.

100 NORTH TAMPA STREET, SUITE 2800
TAMPA, FLORIDA 33602-5126

TALLAHASSEE OFFICE
117 S. GADSDEN
TALLAHASSEE, FLORIDA 32301
TELEPHONE (904) 222-2525
FAX (904) 222-5606

LYNWOOD F. ARNOLD, JR.
JOHN W. BAKAS, JR.
LINDA C. DARSEY
C. THOMAS DAVIDSON
STEPHEN O. DECKER
VICKI GORDON KAUFMAN
JOSEPH A. MCGLOTHLIN
JOHN W. MCWHIRTER, JR.
RICHARD W. REEVES
FRANK J. RIEF, III
PAUL A. STRASKE

MAILING ADDRESS: TAMPA
P.O. Box 3350, TAMPA, FLORIDA 33601-3350

TELEPHONE (813) 224-0866

FAX (813) 221-1854

CABLE GRANDLAW

PLEASE REPLY TO:
TALLAHASSEE

May 24, 1996

HAND DELIVERY

The Honorable Susan F. Clark, Chairman
The Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Re: Docket No. 920199-WS -- Scheduling of Decisions

Dear Chairman Clark:

I write on behalf of Marion Oaks Homeowners Association ("Marion Oaks") and the City of Keystone Heights ("the City") to raise a matter of procedure. I wish to point out a logistical conundrum in the above docket, and to suggest how it could be resolved.

ACK _____ Some procedural background is needed to describe the problem. On October
AFA _____ 19, 1995, the Commission entered an order (PSC-95-1292-FOF-WS) requiring
APP _____ Southern States Utilities (SSU) to refund money to customers who paid more under
CAF _____ the uniform rate design first approved by the Commission than under the rates the
_____ Commission prescribed on remand from the appellate court.

DMU _____
CTR _____ On February 29, 1996, the Supreme Court of Florida entered its decision in the
_____ case of GTE Florida, Inc. v. Clark, 668 So.2d 971 (Fla. 1996).

EAG _____
LEG _____ On March 21, 1996, the Commission issued Order No. PSC-96-0406-FOF-WS,
LIN _____ in which it decided to reconsider the refund order on its own motion. The Commission
OPC _____ directed parties to brief the impact of the GTE decision on this case. Among other
RCH _____ things, the Commission specifically asked the parties to address whether, in light of
_____ GTE, the Commission should consider ordering a refund to some customers and

SEC _____
WAS _____
OTH _____

DOCUMENT NUMBER-DATE
05809 MAY 24 88
FPSC-RECORDS/REPORTING

The Honorable Susan F. Clark, Chairman
Page Two
May 24, 1996

allowing SSU to recover the refund amount by imposing a surcharge on other customers.

On May 3, 1996, this firm was engaged to represent Marion Oaks and the City, customers who would be required to pay a surcharge if one were ordered by the Commission. On May 9, 1996, we filed Marion Oaks' and the City's petition to intervene (and accompanying motion for oral argument) in this docket. SSU opposes the petition. The Commission has not yet ruled on the May 9 petition to intervene.

On May 15, 1996, Marion Oaks and the City lodged, subject to the ruling on the pending petition to intervene, a motion for leave to file, out of time, a memorandum of law addressing the issues the Commission directed the parties to brief. The memorandum accompanied the motion.

The procedural dilemma is this. The Commission's existing internal schedule calls for the Staff to submit a written recommendation treating all the issues the Commission identified for briefing, including the issue of a possible surcharge, on May 30, 1996, to be considered during the June 11 Agenda Conference. However, there is no plan to rule on our May 9 petition to intervene prior to that time. As we understand the situation, Staff intends to address the pending petition to intervene and the motion for leave to file out of time in the same recommendation in which it will discuss the merits of the parties' positions on the questions raised by the Commission. (It is not clear whether Staff intends to address the arguments that Marion Oaks and the City developed in their memorandum of law in this recommendation.)

To provide a logical, orderly, and fair path to a decision, these procedural and substantive issues should be bifurcated. Marion Oaks and the City request that the Commission take up only the petition to intervene, the related request for oral argument, and the motion for leave to file the brief on June 11. Once those matters have been decided, Staff could then prepare a separate recommendation on substantive issues for the next agenda conference.

A decision on the merits on June 11 is not required to meet any statutory deadline. On the other hand, to attempt to reach a final substantive decision on the same day that the Commission rules on the pending petition to intervene and motion to consider the brief is to risk creating an awkward, unwieldy situation at best, and a prejudicially incomplete analysis of an important issue at worst. This docket was opened in 1992. I appreciate the desire of Staff and Commissioners to conclude the matter. However, in the scheme of things, continuing a four-year old docket for two

The Honorable Susan F. Clark, Chairman
Page Two
May 24, 1996

more weeks is a small price to pay to ensure an orderly procedure and to avoid a potentially prejudicial result.

For these reasons, I respectfully request that the Commission bifurcate the pending procedural matters and the decision on the substantive issues.

Yours truly,


Joseph A. McGlothlin

JAM/jei

cc: Commissioners
Ms. Lila Jaber
Mr. John R. Howe
Mr. Jack Shreve
Mr. Kenneth A. Hoffman
Mr. Harry C. Jones
Mr. Michael B. Twomey
Mr. Arthur Jacobs
Ms. Susan W. Fox
Mr. Darol Carr
Ms. Blanca S. Bayo