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

May 30, 1996

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING

FROM: DIVISION OF LEGAL SERVICES (JABER)
DIVISION OF WATER AND WASTEWATER (WILLIS, CHASE, RENDELL)

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: JUNE 11, 1996 - REGULAR AGENDA - RECONSIDERATION OF DECISION ON REMAND - PARTICIPATION DEPENDENT UPON VOTES ON ISSUES NOS. 1 AND 3.

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: I:\PSC\LEG\WP\920199RE.RCM

CASE BACKGROUND

On May 11, 1992, Southern States Utilities, Inc., (SSU or utility) 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-92-0948-FOF-WS, issued September 8, 1992, and as amended by Order No. PSC-92-0948A-FOF-WS, issued October 13, 1992, the Commission approved interim rates designed to generate annual water and wastewater revenues of $16,347,596 and $10,270,606, respectively. 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.

Notices of appeal of Order No. PSC-93-0423-FOF-WS were filed with the First District Court of Appeal by Citrus County and Cypress and Oak Villages (COVA), now known as Sugarmill Woods Civic Association (Sugarmill Woods) and the Office of Public Counsel (OPC). On October 18, 1993, the utility filed a Motion to Vacate Automatic Stay, which was granted by the Commission by Order No. PSC-93-1788-FOF-WS, issued December 14, 1993.

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 (decision on remand). 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. At the February 20, 1996, Agenda Conference, the Commission, inter alia, voted to deny SSU's motion for reconsideration.

On February 29, 1996, subsequent to the Commission's vote on the utility's motion for reconsideration but prior to the issuance of the order memorializing the vote, the Supreme Court of Florida issued its opinion in GTE Florida, Inc. v. Clark, 21 Fla. L. Weekly S101 (Fla. Feb. 29, 1996). By Order No. PSC-96-0406-FOF-WS, issued March 21, 1996, the Commission, after finding that the GTE decision may have an impact on the decision in this case, voted to reconsider on its own motion, its entire decision on remand. The Commission allowed all parties of record in this docket to file briefs "to address the generic issue of what is the appropriate action the Commission should take upon the remand of the SSU decision in light of the GTE decision." At a minimum, the Commission requested that the briefs include discussion on: "whether reopening the record in Docket No. 920199-WS is appropriate, whether refunds are appropriate, and whether a surcharge as set forth in the GTE decision is appropriate." The parties in the docket, with the exception of OPC, filed briefs on April 1, 1996. SSU filed a Request for Oral Argument with its brief.

On May 9, 1996, the City of Keystone Heights, the Marion Oaks Homeowners Association, and the Burnt Store Marina, hereinafter referred to as "petitioners," filed a request for oral argument and a petition to intervene. On May 16, 1996 and May 21, 1996, SSU and Citrus County, respectively, timely filed their responses in opposition to the petitioners' request for oral argument and petition to intervene. On May 24, 1996, Sugarmill Woods filed an untimely response to the petitioners' petition to intervene. On May 15, 1996, the petitioners filed a Motion to File Memorandum Out of Time and a Memorandum of Law on Reconsideration of Order No. PSC-95-1292-FOF-WS.

This recommendation addresses the three major points of the Commission's reconsideration of its remand decision and all other outstanding matters regarding this docket.

DISCUSSION OF ISSUES

ISSUE 1: Should the Request for Oral Argument on the Petition to Intervene, filed by the City of Keystone Heights, the Marion Oaks Homeowners Association, and the Burnt Store Marina, be granted?

RECOMMENDATION: No. The petitioners' request for oral argument on their petition to intervene should be denied. (JABER)

STAFF ANALYSIS: As stated earlier, on May 9, 1996, petitioners filed a Petition to Intervene and Request for Oral Argument. SSU and Citrus County oppose the request for oral argument.

In support of the request for oral argument on their petition to intervene, petitioners state that they are customers of SSU, they have sought leave to intervene to protect their rights regarding the refund and rate design issues now before the Commission, and they comprise part of the group of customers who would be most dramatically affected by the Commission's ruling.

The petitioners' request for oral argument does not sufficiently explain how oral argument on their petition to intervene could benefit the Commission in its consideration of the matter. As stated above, the support provided by the petitioners is more in the nature of justification for the petition to intervene itself. Staff believes that the petition to intervene, discussed in greater detail in Issue 2, contains sufficient argument for the Commission to render a fair and complete evaluation of the merits without oral argument. Accordingly, staff recommends that the request for oral argument filed by the City of Keystone Heights, the Marion Oaks Homeowners Association, and the Burnt Store Marina, on their petition to intervene, be denied.

ISSUE 2: Should the Petition to Intervene filed by the City of Keystone Heights, the Marion Oaks Homeowners Association, and the Burnt Store Marina, be granted?

RECOMMENDATION: No. The Petition to Intervene filed by the City of Keystone Heights, the Marion Oaks Homeowners Association, and the Burnt Store Marina, should be denied. (JABER)

STAFF ANALYSIS: As stated earlier, on May 9, 1996, the petitioners filed their petition to intervene. On May 16 and May 21, 1996, SSU and Citrus County, respectively, timely filed their respective opposition to the petition to intervene. On May 24, 1996, Sugarmill Woods filed an untimely response in opposition to the petition to intervene.

In support of the Petition to Intervene, the petitioners assert that they are customers of SSU; that OPC has determined that it cannot advocate on behalf of all customers on refund and rate design issues; that the Commission permitted their intervention in Docket No. 950495-WS; and that outside counsel has only recently been retained to represent petitioners. The petitioners further assert that "certain groups of customers will have no representation on the issue of whether they will be backbilled to effectuate a refund to other customers." As authority, the petitioners state that the Commission's disposition of the implementation of a refund, if any, and other rate structure issues will affect the substantial interests of intervenors under the standard set out in Agrico Chemical Co. v. DER, 406 So. 2d 478 (Fla. 2d DCA 1981), which requires a showing of injury in fact and that such injury be of the type the proceeding is designed to protect. The petitioners also cite to Sections 120.57, 366.041, 366.06, and 366.07, Florida Statutes.

In its response, SSU states that: the petition to intervene is untimely pursuant to Rule 25-22.039, Florida Administrative Code; the petitioners' reliance on Chapter 366, Florida Statutes, is misplaced; the petitions to intervene filed since April, 1993 have consistently been denied as untimely; and Keystone's first petition to intervene, filed on January 17, 1996, was denied. SSU further asserts that the petitioners' argument that this situation is analogous to the intervention granted in Docket No. 950495-WS is without merit because the petitioners were granted intervention in Docket No. 950495-WS, prior to the conclusion of the hearing once OPC remedied the defect in its previously filed proposal by procuring funds out of its own budget to pay for alternate counsel.

From the response of Citrus County, it appears that Citrus County is in total agreement with SSU on this issue. In addition, Citrus County states that the petitioners' comparison of this intervention to that allowed in Docket No. 950495-WS "stretches the time line just a bit and ignores the particular circumstances of the Office of Public Counsel's outside counsel efforts, which are specific solely to Docket No. 950495-WS." Citrus County states that the Commission should draw the line at intervention and the petitioners' intervention in Docket No. 950495-WS is irrelevant.

Staff agrees with SSU and Citrus County. The Commission's rule on intervention is clear. Rule 25-22.039, Florida Administrative Code, states that petitions for leave to intervene must be filed at least 5 days before the final hearing. The final hearing in this docket was held on November 6, 1992. Pursuant to Rule 25-22.039, Florida Administrative Code, the petitioners' request for intervention is not timely.

One of the petitioners, the City of Keystone Heights, first sought intervention in this docket on January 22, 1996. At the February 20, 1996, Agenda Conference, the Commission voted to deny the City of Keystone Heights' first petition to intervene pursuant to Rule 25-22.039, Florida Administrative Code. Contrary to the petitioners' assertions, the circumstances described in the first petition are not different from those described now. The group of customers that could be affected by the backbilling concept, the customers that have paid less with uniform rates, has always existed. In the first petition, the City of Keystone Heights asserted that "a great many of its citizens will be affected by the outcome of these proceedings and the final decision of the Commission, including any appeals of such decision, concerning Southern's rate structure." Keystone Heights further asserted that the recent decision by the Commission to impose a modified stand alone rate structure raises new issues that will have financial impacts on the City of Keystone Heights.

Staff believes that the petitioners' request to intervene should be denied. First, all of the petitioners received all of the notices sent in Docket No. 920199-WS and were afforded all opportunities to participate in the proceeding. Second, the main issue on appeal has always been rate structure; therefore, the petitioners' argument that new issues have been raised or new substantial interests could be affected is without merit. Granted, the GTE decision is a recent decision, but rates and rate structure have always been the major issues in the instant case and were the main points on appeal. Third, the petitioners' analogy to the intervention granted in Docket No. 950495-WS is also without merit. The Commission was clear that intervention in that case was granted

for the very unique circumstances identified early on in that case by OPC with respect to potential conflict of representation. Additionally, the hearing was still open when intervention was granted. In this case, this request comes after an appeal and after a decision on remand has been made.

Consistent with Rule 25-22.039, Florida Administrative Code, the reasons outlined herein, and the Commission's post hearing decisions in this docket, Staff recommends that the petitioners' request to intervene be denied.

ISSUE 3: Should the Motion to File Memorandum out of Time filed by the City of Keystone Heights, the Marion Oaks Homeowners Association, and the Burnt Store Marina, be granted?

RECOMMENDATION: No, the Motion to File Memorandum out of Time should be denied if the Commission approves Staff's recommendation in Issue 2. (JABER)

STAFF ANALYSIS: As stated in the background, the petitioners filed a Motion to File Memorandum out of Time with attached Memorandum on May 15, 1996. In its motion, the petitioners state that parties to the docket filed briefs on April 1, 1996, but counsel for the petitioners was not retained until May 3, 1996. The petitioners allege that their interests diverge sharply from the other customers who have representation in this case. In further support of the motion, petitioners allege that if they are not permitted to file the memorandum, their interests will not be represented before the Commission and those interests will be substantially affected by the Commission's decision on reconsideration.

For purposes of brevity and efficiency, Staff refers to its analysis in the previous issue and only adds that the petitioners had ample opportunity to participate in this docket prior to hearing. Because the Commission was clearly concerned about the impact of the GTE decision on the instant case, the Commission has allowed the parties to file briefs on the relevant issues. Those issues include the issue on whether a surcharge is appropriate for SSU. All of the briefs have included a discussion on that issue and the Commission has sufficient information at this point to make a well informed decision. If the Commission approves Staff's recommendation in the prior issue, Staff recommends that the petitioners' motion to file memorandum out of time be denied.

In the event the Commission votes to grant intervention or the motion described herein, the petitioners make the following arguments in their memorandum: 1) the GTE decision does not support a surcharge on customers in this case because of the factual differences in the two cases; 2) if there is a refund, it should be made by SSU, not financed by other ratepayers; and 3) the record should be reopened only if the Commission considers surcharging one group of customers to benefit another.

ISSUE 4: Should SSU's Request for Oral Argument be granted?

RECOMMENDATION: Yes. Oral argument should be permitted at the agenda conference, but argument should be limited to five minutes for each party. (JABER)

STAFF ANALYSIS: On April 1, 1996, SSU filed a Request for Oral Argument with its brief. SSU's request contains no support for allowing oral argument. Recommendations which concern the appropriate actions the Commission should take on an order remanded by the Court have traditionally been noticed as "Parties May Not Participate," -- the rationale being that the proceeding involves a post-hearing decision, and participation should be limited to Commissioners and Staff. It would follow that participation on the Commission's reconsideration of the Order addressing the remand should also be limited in the same manner.

However, in Docket No. 920188-TL, In re: Application for a rate increase by GTE Florida, Inc., and consistently in the instant case, the Commission heard oral argument from the parties. This case is unique and very complex. It is likely that oral argument on the issues set forth herein will aid the Commission in forming its decision and evaluating the law in these matters. In light of the foregoing, Staff believes that SSU's request for oral argument should be granted.

Staff recommends that the Commission allow the parties to participate in this agenda conference by allowing oral argument. In the previous recommendations addressing the remand of this docket, Staff recommended and the Commission approved allowing fifteen minutes of argument for each side. In this recommendation there are multiple issues with arguments not easily identified "by side." Accordingly, for purposes of this recommendation, Staff recommends that oral argument should be limited to five minutes for each party.

ISSUE 5: What is the appropriate action the Commission should take upon the remand of the SSU decision in light of the GTE decision?

RECOMMENDATION: The record in Docket No. 920199-WS should not be reopened. Further, neither a refund nor a surcharge should be ordered. (JABER, WILLIS, CHASE, RENDELL)

STAFF ANALYSIS: As stated earlier, the portion of Order No. PSC-93-0423-FOF-WS approving increased rates and charges for SSU based upon a uniform rate structure was reversed by the First District Court of Appeal. See, Citrus County v. Southern States Utilities, Inc. The Court directed that the cause be "remanded for disposition consistent herewith." In reversing the Commission's decision, the Court stated that "[t]he Commission's order must be reversed based on our finding that chapter 367, Florida Statutes, did not give the Commission authority to approve uniform statewide rates for these utility systems which are operationally unrelated in their delivery of utility service." Citrus County at 1311. The Court further states that "[h]ere, we find no competent substantial evidence that the facilities and land comprising the 127 SSU systems are functionally related in a way permitting the PSC to require that the customers of all systems pay identical rates." Id. at 1310.

In light of the Court's decision, the Commission issued Order No. PSC-95-1292-FOF-WS requiring the utility to implement a modified stand alone rate structure and make refunds. Subsequent to the decision made by the Commission regarding reconsideration of that Order, the Supreme Court of Florida decided GTE Florida, Inc. v. Clark, which held that GTE should be allowed to recover erroneously disallowed expenses through the use of a surcharge. In light of the GTE decision, by Order No. PSC-96-0406-FOF-WS, the Commission voted to reconsider its entire remand decision with the broad issue being that outlined above. There were three specific points to that reconsideration: "whether reopening the record in Docket No. 920199-WS is appropriate, whether refunds are appropriate, and whether a surcharge as set forth in the GTE decision is appropriate." The analysis below is divided into those three points. Immediately below is a summary of the GTE decision. The application of the GTE decision to the three main points on reconsideration is made in the appropriate sections.

GTE Florida, Inc. v. Clark

In the first GTE appeal, GTE Florida, Inc. v. Deason, 642 So. 2d 545 (Fla. 1994), the Supreme Court affirmed in part and reversed in part a Commission order which denied GTE's request for a rate increase and ordered GTE to reduce revenues by $13,641,000. The

order was reversed to the extent that it denied GTE recovery of costs because those costs involved purchases from GTE's affiliates. On remand, the Commission issued an order which only allowed recovery of the expenses prospectively from May 3, 1995. The initial order was issued May 27, 1993. GTE appealed the Commission's order on remand and that order was reversed by the Court. The Court has now held that GTE should be allowed to recover its erroneously disallowed expenses through the use of a surcharge, and that no customer should be subjected to the surcharge unless that customer received GTE services during the disputed period of time.

Whether Reopening the Record is Appropriate

In SSU's brief on this subissue, SSU refers the Commission back to the utility's motion for reconsideration, wherein SSU asserts that the Commission erred in its failure to grant SSU's request to reopen the record for the limited purpose of incorporating the record from Docket No. 930945-WS, the jurisdiction docket. In support of its argument to reopen the record to incorporate or take new evidence, SSU cites to Air Products and Chemicals v. FERC, 650 F.2d 687, 699 (D.C. Cir. 1981) and Public Service Commission of the State of New York v. FPC, 287 F.2d 143, 146 (D.C. Cir. 1960). SSU states that reopening the record is appropriate where the court decision is based on a new rule of law not advanced by the parties in the appeal or considered by the agency in the first instance. See, McCormick Machinery v. Johnson & Sons, 523 So. 2d 651, 656 (Fla. 1st DCA 1988).

In its brief, Sugarmill Woods first objects to the Commission's reconsideration of this matter and states that the Commission does not have authority to entertain this reconsideration on its own motion. It is Sugarmill Woods' argument that the Commission only has authority on its own motion to correct clerical errors and errors arising from mistake or inadvertence. Taylor v. Dept. of Professional Regulation, 527 So. 2d 557 (Fla. 1988).

Sugarmill Woods further argues that the GTE decision does not provide any basis for reopening the record. Sugarmill Woods refers to the underlying GTE order on remand where the Commission stated that no further hearing was appropriate. Sugarmill Woods cites to Village of North Palm Beach v. Mason, 188 So. 2d 778 (Fla. 1966) and states that the Commission may make more explicit factual findings if the findings are supported by the existing record and the Court's order calls for further findings; however, it is Sugarmill Woods' opinion that in this case, additional findings cannot be made on an insufficient record. Further, Sugarmill Woods

argues that the Court stated that it did not have to rule on all of the points on appeal because the finding that the Commission lacked the statutory authority to order SSU to implement a uniform rate was dispositive. If the record is reopened, Sugarmill Woods argues that the remaining issues would have to be resolved by the Court. Finally, Sugarmill Woods argues that reopening the record would violate the law of the case doctrine because the Court has found that SSU's facilities are not functionally related and reopening the record to make that finding is in contradiction of the Court. Citrus County adopts Sugarmill Woods' brief and states that there is no legal basis or necessity for reopening the record.

In Order No. PSC-95-1292-FOF-WS at page 4, the Commission specifically states:

> We will not reach the question of whether we can or cannot reopen the record to address the court's concern, because as a matter of policy in this case, we find that the record should not be reopened.

By Order No. PSC-93-0423-FOF-WS, the Commission approved increased rates for SSU based on a uniform rate structure. That part of the decision has been overturned by the Court. The Court held that "[u]ntil the Commission finds that the facilities and land owned by SSU and used to provide its customers with water and wastewater services are functionally related as required by the statute, uniform rates may not lawfully be approved." Citrus County at 1311. As recognized by counsel for Sugarmill Woods, "[f]unctional relatedness of SSU's land and facilities was not an issue in the rate case." Sugarmill Woods' brief at 3. Neither the parties nor Staff had the opportunity to present evidence on whether or not SSU was "functionally related" during the test year used in Docket No. 920199-WS. Therefore, the Commission has not had the opportunity to consider that issue. The question then becomes should the Commission reopen the record for the purpose of taking evidence on that issue.

It is Staff's belief that there is nothing in the Court's opinion which appears to specifically prohibit the Commission from reopening the record on the sole issue of whether SSU's facilities and land were functionally related during the test year used in Docket No. 920199-WS. It is well settled that if an opinion is reversed with general directions for further proceedings, a trial judge is vested with broad discretion in handling or directing the course of the case. Tampa Electric v. Crosby, 168 So. 2d 70 (Fla. 1964); Lucom v. Potter, 131 So. 2d 724 (Fla. 1961); Veiner v. Veiner, 459 So. 2d 381 (Fla. 3d DCA 1984), review denied, 469 So.

2d 750 (Fla. 1985); City of Pensacola v. Capital Realty Holding Co., 417 So. 2d 687 (Fla. 1st DCA 1982). Staff recognizes that the language in the opinion takes precedence over the language in the mandate and although the mandate does use the words "further proceedings," the opinion does not. Notwithstanding, Staff believes that the ultimate finding in the opinion does, in fact, result in general directions for the "disposition" of the case.

In the GTE order on remand, Order No. PSC-95-0512-FOF-TL, issued April 26, 1995, the Commission did not find it appropriate to reopen the record to take further evidence, and stated that: "Given the Commission's general practice of not conducting further evidentiary proceedings on remand unless the record is insufficient or incomplete, we believe no further hearing . . . is appropriate." Order at 3. That situation can be distinguished. First, Staff agrees that the Commission should not reopen the record if the Court finds that the record already presented is insufficient. This is not the situation we have here. In this instance, even the Court has recognized that there was no evidence on the issue of functional relatedness pursuant to Section 367.171, Florida Statutes. Second, reopening the record in GTE would have resulted in a second bite of the apple. Reopening the record in this case for a very limited purpose as the Court has suggested cannot be a second bite of the apple if the issue was never identified or litigated.

Case law supports the proposition that an evidentiary hearing may be had after remand if that evidentiary hearing does not afford parties a "second bite of the apple." The test appears to be "did the parties have the opportunity to present the evidence at the first hearing?" See Broward County v. Coe, 376 So. 2d 1222 (Fla. 4th DCA 1979). In Coe, the Court held that where tax officials **had the opportunity** to present evidence on the issue of good faith at the first evidentiary hearing, the trial court did not err by not authorizing a second evidentiary hearing on the issue of good faith. Id. at 1222. The "opportunity to present evidence" is the appropriate distinction here. During the time Docket No. 920199-WS was processed, the Commission clearly had jurisdiction over SSU's 127 service areas. No one identified "functional relationship" as found in Section 367.171, Florida Statutes, as an issue; and its relevance or its application to SSU was never litigated.

Notwithstanding Staff's belief that the record in Docket No. 920199-WS could be reopened for the limited purpose described above, Staff recommends that the Commission not reopen the record. By Order No. PSC-95-1292-FOF-WS, the Commission recognized that the evidence presented in Docket No. 920199-WS was sufficient to support an alternative rate structure: a modified stand alone rate

structure. Staff believes that there is nothing in the GTE decision nor is there any additional analysis that would require a change in the Commission's original assessment on this point. Based on the foregoing, Staff recommends that the Commission not reopen the record in this docket.

Whether a Refund and/or Surcharge is Appropriate

For the purpose of understanding this part of this issue, the following facts are necessary. In the initial decision on remand (Order No. PSC-95-1292-FOF-WS), the Commission ordered SSU to implement a modified stand alone rate structure. The utility did not implement that rate structure in accordance with that decision because the utility sought reconsideration. However, subsequent to that decision, SSU was granted interim water and wastewater rates in Docket No. 950495-WS, based on a modified stand alone rate structure. The issue of whether refunds are appropriate is a result of the change from the uniform rate structure to the modified stand alone rate structure. The utility has implemented its approved interim rate.

In its brief, SSU asserts that it is within the Commission's discretion to order refunds to those who overpaid pending appeal so long as the Commission draws the revenue for any refunds from those who underpaid during the period of time for which refunds are calculated. It is SSU's opinion that the Commission lacks any discretion to impair SSU's recovery of the aggregate revenue requirements which the district court approved. In a footnote, SSU suggests that the Commission could choose to limit the offsetting effects of refunds and surcharges to those persons who were in fact customers of SSU during the pendency of the appeal and remand proceedings to avoid the imposition of the remand remedy on the new customers.

Sugarmill Woods, in its brief, states that the GTE decision confirms the propriety of making refunds to the customers who overpaid for service. Sugarmill Woods states that the GTE decision supports its position throughout the remand proceedings: "since money changed hands under the terms of an erroneous judgment of the Commission, restitution to the parties who lost funds under the terms of the order is necessary. Here, this means that the parties who overpaid are entitled to refunds." Sugarmill Woods cites to Sheriff of Alachua County v. Hardie, 433 So. 2d 15 (Fla. 1st DCA 1983) and Mann v. Thompson, 118 So. 2d 112 (Fla. 1st DCA 1960) to state that parties must be restored to their original positions before the entry of the erroneous judgment.

Citrus County has adopted Sugarmill Woods' brief and has made additional arguments in support of requiring refunds and against allowing surcharges. On refunds, it appears that Citrus County's arguments are that SSU should have allowed the automatic stay to remain in effect pending appeal and there is nothing in the GTE decision to suggest a basis for the Commission reversing its decision to compel refunds.

Staff's recommendation on whether refunds and/or surcharges are appropriate is closely intertwined. It is Staff's opinion that the two subissues are contingent upon each other. If the Commission believes that a refund is not required, then the customers that paid less under the uniform rate structure should not be surcharged. The reverse is also true.

As supported by the GTE decision, Staff believes there are several concerns that must be addressed in determining whether refunds are appropriate. GTE Florida, Inc. v. Clark stands for the principle that "utility ratemaking is a matter of fairness. Equity requires that both ratepayers and utilities be treated in a similar manner." GTE at S102. In attempting to apply the principle of fairness to the instant case, the Commission has to: recognize that the change in SSU's rate structure to a modified stand alone rate structure results in a lower rate for the customers that paid "too much" with uniform rates; recognize that a modified stand alone rate structure results in a higher rate for customers that paid "too little" with uniform rates; and recognize that SSU's revenue requirement was affirmed on appeal and cannot change. Accordingly, consistent with the GTE decision and the principles of fairness and equity, the Commission has two irreconcilable objectives: to protect customers from overpayment and to allow the utility the opportunity to earn a fair rate of return. Interestingly enough, the concept of fairness and equity is addressed in the Citrus County decision: "[t]he rate of return 'cannot be set so low as to confiscate the property of the utility, nor can it be made so high as to provide greater than a reasonable rate of return, thereby prejudicing the consumer.'" United Telephone Co. v. Mayo, 345 So. 2d 648, 651 (Fla. 1977). Id.

This discussion will beg the question: how should "fairness" and "equity" be defined? GTE defines equity by stating what is required -- that both ratepayers and utilities be treated in a similar manner. While the court does not attempt to define fairness, the two words are used interchangeably. Webster's Dictionary defines equity as "equal, fair." Equitable is defined as "dealing fairly and equally with all concerned." Similarly, Webster's states that fair "suggests equal treatment for all concerned." (emphasis added).

The decision on what was fair and equitable in GTE was much simpler -- there were only two interests to balance. The Court was not faced with the issue of whether one group of customers should provide the revenue for a refund for another group of customers. Staff believes that this is a very important point because in the instant case, "fairness" has to be determined from three perspectives: the utility's and the two different groups of customers.

Here, the Commission needs to understand a major point from the onset. If the Commission believes that fairness and equity means that you make everyone equal from a pure monetary sense, then a refund and surcharge is the method by which that type of fairness is achieved. In order to retain its revenue requirement, the utility would be allowed to backbill, so that customers who had originally paid too little for receiving service ultimately do pay their fair and appropriate share for such service. Correlatively, the utility would remit refunds to those customers who had originally paid a disproportionate share for their service. Should the Commission decide to define fairness and equity in such a manner, then the Commission must make certain findings, for example, that the two factual situations in the two cases are similar enough to support implementation of a surcharge for the purpose of achieving the Commission's definition of "fairness" to both the utility and the group of customers receiving a refund. The order would have to contain all of the necessary quotes from the GTE decision regarding fairness and equity. The Commission should also find that the second group of customers "can be subjected to the unexpected charges" as stated in GTE, that the implementation of the surcharge does not constitute retroactive ratemaking, and finally, that SSU's request to vacate the stay did not constitute a waiver to collect the surcharge.

However, Staff believes that there are two problems with that approach. First, Staff does not believe that fairness and equity necessarily mean that entities or persons are made whole from a purely monetary standpoint. Second, there is a totally different group of customers to consider here. In Staff's opinion, the GTE court defined equity very broadly: "Equity requires that both ratepayers and utilities be treated in a similar manner." (emphasis added). GTE at S102. In focusing on the entire principle of "fairness," it is important to remember that there were both winners and losers under the uniform rate structure; therefore, basing a decision on the impact of only a portion of the utility's customer base is improper. From a policy standpoint and now confirmed by law, the Commission must make its decisions after considering the impact on all customers and the utility. GTE at S102.

The theme of SSU's brief is that regardless of the decision the Commission makes on remand, that decision must be revenue neutral to SSU. Accordingly, SSU requests that the Commission either provide a combination of refunds and equivalent surcharges or deny refunds completely and move to a different rate structure prospectively. In support of its request SSU argues that: the GTE decision governs this proceeding and the outcome of the two cases should be identical; and a surcharge imposed after appellate review to recoup undercollection by virtue of an erroneous order does not constitute retroactive ratemaking.

The only argument on this point that Sugarmill Woods makes in its brief is that SSU had rates in effect that would have allowed SSU to recover its full revenue requirement. Sugarmill Woods distinguishes the GTE decision by stating that in GTE's case, the utility did not request a stay, whereas SSU had a stay and chose to vacate it. In sum, Sugarmill Woods states that if the Commission believes that SSU has not waived its right to seek surcharges, then special counsel should be appointed to represent the customers to be surcharged. Citrus County adopts Sugarmill Woods' brief on the surcharge discussion and further states that the customers temporarily advantaged by uniform rates were not aware of the advantage and therefore, are now not aware of the potential rate surcharges. Citrus County argues that there is nothing in the GTE decision to suggest a basis for the Commission reversing its decision to compel refunds.

In Staff's August 31, 1995 recommendation on remand (primary recommendation in issue 5), Staff discussed the various scenarios in addressing the "refund issue." In one of the scenarios, Staff discussed the possibility of requiring a refund while allowing the utility to backbill. Although it was discussed, Staff did not make that recommendation because the case law at the time supported the notion that backbilling for this type of situation would violate the prohibition against retroactive ratemaking. However, the GTE decision appears to dismiss that notion. On retroactive ratemaking, the Court states:

> We also reject the contention that GTE's requested surcharge constitutes retroactive ratemaking. This is not a case where a new rate is requested and then applied retroactively. The surcharge we sanction is implemented to allow GTE to recover costs already expended that should have been lawfully recoverable in the PSC's first order.

GTE at S102. The Court goes on to state:

> If the customers can benefit in a refund situation, fairness dictates that a surcharge is proper in this situation. We cannot accept the contention that customers will now be subjected to unexpected charges. The Office of Public Counsel has represented the citizen ratepayers at every step of this procedure. We find that a surcharge for recovery of costs expended is not retroactive ratemaking any more so than an order directing a refund would be.

GTE at S102.

As noted earlier, the revenue requirement in this case was not specifically in dispute, but rather the revenue recovery methodology. A refund at this stage without appropriate recovery for the revenue shortfall will force the utility to give up revenues to which the Commission has determined the utility is entitled, thereby taking from the utility the opportunity to earn a fair rate of return. This kind of an effect on the utility's revenue requirement would be contrary to law because the Court has affirmed the Commission's decision on the utility's revenue requirement. Points of law adjudicated by appeal become the "law of the case" and those points are "no longer open for discussion or consideration in subsequent proceedings." Strazzulla v. Hendrich, 177 So. 2d 1, 2, 3 (Fla. 1965). See also, Barry Hinnant, Inc. v. Spottswood, 481 So. 2d 80 (Fla. 1st DCA 1986).

The intervenors have stated in various stages of the remand proceeding and in their briefs that one of the reasons a refund is appropriate is because SSU assumed a risk by requesting a vacation of the automatic stay and by implementing the uniform rate. In fact, in its order on remand, the Commission agreed with this analysis:

> Upon reviewing the language from the Order Vacating the Stay and the transcripts from the Agenda Conference in which we voted on the utility's Motion to Vacate the Stay, we find that the utility accepted the risk of implementing the rates. It is clear that we recognized the need to secure the revenue increase both as a condition of vacating the stay and to insure funding of refunds in the event refunds were required. Having

> established a refund condition for those revenues, we can order a refund without violating retroactive ratemaking concepts. United Telephone Company v. Mann, 403 So. 2d 962 (Fla. 1981).

Order No. PSC-95-1292-FOF-WS at 7. The GTE decision rejects the notion that failure to request a stay constitutes a waiver to seek recovery of an overcharge. On this point, the Court states that "[t]he rule providing for stays does not indicate that a stay is a prerequisite to the recovery of an overcharge or the imposition of a surcharge. The rule says nothing about a waiver, and the failure to request a stay is not, under these circumstances, dispositive." GTE at S102. Logically, SSU's request to have the automatic stay lifted should not constitute a waiver and is not dispositive.

Staff believes that GTE is indeed controlling in this proceeding, not for the surcharge concept, but rather, for the principle of "fairness." For SSU, Staff believes that allowing the imposition of a surcharge is not appropriate. SSU's request is also contrary to the Commission's practice of not permitting the administrative costs of a refund to be borne by the ratepayers. See, for example, the standard language used in rate case proceeding orders where the Commission states: "in no instance should the maintenance and administrative costs associated with the refund be borne by the customers. These costs are the responsibility of, and should be borne by, the utility." Orders Nos. PSC-95-1605-FOF-SU, PSC-94-0245-FOF-WS and PSC-95-0474-FOF-WU.

Staff believes that there are two main distinctions in the two cases to support Staff's recommendation on this point. First, GTE's request for a rate increase was completely denied; in fact, GTE was ordered to reduce revenues. Second, the GTE decision only involved making a determination of "fairness" from two perspectives: the utility's and the general body of ratepayers' (rate increase versus no rate increase). Upon reviewing the GTE decision, the briefs filed by the parties, and previous recommendations, Staff believes that the utility and the customers could be treated in a "similar" manner by the Commission choosing to allow SSU to apply the modified stand alone rate structure prospectively and not ordering a refund. Under this approach the customers that paid more with the uniform rate will not get a refund but will get a prospective rate reduction. No surcharge is thus necessary or appropriate. In terms of fairness and equity, the customers who paid "too much" will have a prospective rate reduction and the utility maintains its revenue requirement. Accordingly, Staff recommends that the Commission not require a refund or surcharge.

ISSUE 6: In addition to the decisions made herein, should the Commission reaffirm and incorporate the other decisions made in Order No. PSC-95-1292-FOF-WS and at the February 20, 1996 Agenda Conference, in the order memorializing the Commission's decision herein?

RECOMMENDATION: Yes. The decisions made by the Commission outlined below in the Staff Analysis should be reaffirmed and incorporated into the Commission's order. (JABER, WILLIS, CHASE, RENDELL)

STAFF ANALYSIS: As stated earlier, by Order No. PSC-96-0406-FOF-WS, the Commission reconsidered its entire remand decision on its own motion. The decision on remand, Order No. PSC-95-1292-FOF-WS, in part required SSU to implement a modified stand alone rate structure and to make refunds. However, that Order also memorialized other decisions made by the Commission. Because the Commission chose to reconsider its entire decision on remand, Staff believes that to the extent that other portions of Order No. PSC-95-1292-FOF-WS are not specifically addressed in the other issues of this recommendation, the findings made in that Order must be reaffirmed and incorporated into the order resulting from the Commission's decision herein. Additionally, other decisions made at the February 20, 1996 Agenda Conference must also be reaffirmed and memorialized because the order confirming the Commission's vote on that day was never issued. For purposes of information, none of the points raised in this issue were addressed in any of the briefs filed by the parties because these points were not the focus of the reconsideration.

Refund of Interim

In the Joint Petition of Sugarmill Woods, et al, filed on August 28, 1995, Petitioners requested a refund of the interim rates to the extent that they are greater than the final stand-alone rates. The argument in the Petition was that since interim rates were calculated by adding a common dollar amount to the then-current rates of each service area, the interim rates were partly uniform and calculated by combining these service areas for ratemaking purposes without a finding of functional relatedness. The Commission decided that a further refund of interim rates was not appropriate. In making its decision, the Commission recognized that the interim rates approved in this docket were indeed calculated by adding a common dollar amount to the then-existing base facility and gallonage charges. However, the Commission found this did not result in uniform interim rates, but only a "uniform" increase applied to the existing rates. The Commission further recognized that a refund of the interim increase was required by

Orders Nos. PSC-93-0423-FOF-WS and PSC-93-1598-FOF-WS. The refund was necessary after the interim revenue requirements were recalculated using the same data used to establish final rates. This recalculation resulted in overages of interim revenues of 4.69% for water and 1.65% for wastewater. The same method used to calculate the interim increase was used to accomplish this refund. Thus, the interim base facility and gallonage charges were reduced by a flat dollar amount, and refunds were made based on the re-calculated interim rates. Finally, the Commission recognized that the parties did not appeal the orders on interim, and never took issue with the interim revenue requirement or the interim rate structure.

Intervention Petitions

On November 27, 1995, Putnam County filed a Petition to Intervene, wherein it asserted that it is entitled to participate in these proceedings because the substantial interests of a "great many of its citizens will be affected by the outcome of the proceeding and the final decision of the Commission," and it is a customer of SSU and will be directly impacted by the ultimate decision made by the Commission. At the February 20, 1996 Agenda Conference, the Commission denied Putnam County's Petition to Intervene, stating that pursuant to Rule 25-22.039, Florida Administrative Code, Putnam County's petition was not timely filed.

On January 22, 1996, Keystone Heights filed a Petition to Intervene, wherein it also asserted that "a great many of its citizens will be affected by the outcome of these proceedings and the final decision of the Commission, including any appeals of such decision, concerning Southern's rate structure." Like Putnam County, Keystone Heights further asserted that it is a customer of SSU and will be directly impacted by the ultimate decision made by the Commission.

Keystone Heights, in recognizing that this rate case has already proceeded to final hearing, further alleged that the recent decision by the Commission to impose a modified stand alone rate structure raises new issues that will have financial impacts on the City of Keystone Heights (both the city and the residents--customers of SSU). The Commission denied Keystone Heights' Petition to Intervene for the following reasons: 1) Keystone Heights (as well as Putnam County) received notice in Docket No. 920199-WS and were afforded all opportunities to participate in the proceeding; 2) the main issue on appeal has always been rate

structure; therefore, Keystone Heights' argument that new issues have been raised is without merit; and 3) Keystone Heights' petition was not timely filed pursuant to Rule 25-22.039, Florida Administrative Code.

Rate Structure and Final Rates

In deciding against reopening the record as a matter of policy, the Commission chose to review the evidence present in Docket No. 920199-WS to select an alternative rate structure for SSU. Upon reviewing the Court's opinion in Citrus County, the mandate, and the evidence presented in the record, the Commission found that a modified stand alone rate structure, with the modifications discussed below, is appropriate and results in rates that are just, fair, and reasonable in accordance with Section 367.081(2)(a), Florida Statutes. The Commission stated that:

> this rate structure maintains the basic financial integrity of each service area as expressed in rates, while at the same time, recognizes that the utility has consolidated various administrative operations to achieve efficiencies. It also addresses the issues of conservation, rate continuity and rate shock protection.

Order No. PSC-95-1292-FOF-WS at 5. In its original filing, the utility requested rates developed on a modified stand alone basis. According to the utility's proposal and its testimony, individual system revenue requirements should be calculated as the starting point in developing rates. The utility's proposal included systems that were previously combined for ratemaking purposes in Lake, Marion, Putnam, and Seminole Counties. Also under the utility's proposal, dollar caps would be implemented on the water and wastewater bills, assuming the usage of 10,000 gallons per month of water, and residential wastewater usage capped at 10,000 gallons per month. The utility's target for water was $52.00 and $65.00 for wastewater, resulting in a combined bill for water and wastewater service of $117.00. Finally, the utility's proposal supported recovering revenue deficiencies from both water and wastewater customers through an across the board increase over the then-current stand alone rates.

The rate structure approved by the Commission in Order No. PSC-95-1292-FOF-WS contains two modifications to the utility's proposal. First, the Commission incorporated a residential wastewater gallonage cap of 6,000 gallons for all systems. The Commission previously approved the 6,000 gallons residential

wastewater cap in Order No. PSC-93-0423-FOF-WS and that finding was not at issue in the appeal. In Order No. PSC-93-0423-FOF-WS, the Commission recognized that the consolidated factor analysis based on company data (Exhibit 39), as well as customer testimony, indicated that a 6,000 gallon residential wastewater cap would encompass the average usage of most of the utility's customers, as well as mitigate rate shock by providing residential customers with a lower maximum wastewater bill. The Commission's second modification is based on its rejection of the portion of the utility's proposal which supported recovering revenue deficiencies as a result of its proposed benchmarks from both water and wastewater customers through an across the board increase over stand alone rates. The Commission disagreed with the utility's proposal in that regard. The approved rate structure differs from the utility's proposal in that there is no cross subsidization between water and wastewater systems. Revenue requirements were developed initially on a stand alone basis. Accordingly, the Commission found that any water deficiencies should be recovered from water customers and any wastewater deficiencies should be recovered from wastewater customers.

Consistent with the decision to implement a modified stand alone rate structure, the Commission ordered SSU to calculate rates based on the modified stand alone rate structure and unbundle all existing uniform rates. As stated earlier, that requirement of Order No. PSC-95-1292-FOF-WS was never implemented until the utility implemented its new interim rate. However, for purposes of this recommendation, in the event the Commission does order a refund, the Commission should reaffirm its decision that rates be developed based on a water benchmark of $52.00 at 10,000 gallons per month of consumption and a wastewater benchmark of $65.00 capped at 6,000 gallons per month for residential usage, resulting in a combined bill $117.00.

1-Inch Water Meters

In its Motion for Reconsideration of Order No. PSC-95-1292-FOF-WS, the utility asserts that the Commission raised and resolved an issue that was never at issue on appeal -- that being the appropriateness of the 1-inch meter base facility charge (BFC) rates for Pine Ridge and Sugarmill Woods water customers. As discussed in Order No. PSC-95-1292-FOF-WS, water customers on 1-inch meters comprise approximately 85% and 89% of the Pine Ridge and Sugarmill Woods residential customers, respectively. In Order No. PSC-95-1292-FOF-WS, the Commission ordered that the 1-inch meter BFC rates for these customers be reduced to the 5/8 x 3/4 inch BFC rates under the approved modified stand-alone rate structure. The Commission's decision to require the reduction of

the 1-inch meter BFC water rate to the 5/8 x 3/4 inch BFC rate for the Pine Ridge and Sugarmill Woods service areas was in error. The Commission granted the utility's motion for reconsideration in this regard.

The Commission recognized that there was never an issue identified in the rate case as to whether these customers should be charged the BFC rate of the 5/8 x 3/4 inch meter. Further, there was no discussion of this matter in the Final Order and no finding made by the Commission to place the 1-inch BFC at issue for these service areas. This matter was raised by Pine Ridge customers at the final hearing in Docket No. 920199-WS and a late-filed exhibit was requested by the Commission indicating the percentage of residential water customers with 1-inch meters at Pine Ridge and Sugarmill Woods. (TR 650, 653, 662, 670-1, 663, 1838, EXH 126) The Staff recommendation in this docket dated February 3, 1993, contains a discussion of this matter; however, there was no identified issue and no Commission vote on the appropriateness of the 1-inch meter BFC water rates for these two service areas. Therefore, these customers have been paying the 1 inch BFC rates under the uniform rate structure. Finally, the billing determinants that were used to calculate rates referred to in Order No. PSC-95-1292-FOF-WS were based on the 1-inch BFC being applicable to these two service areas. Therefore, the utility was correct that a reduction in the BFC rates results in a revenue deficiency on an annual basis and would increase SSU's refund liability.

ISSUE 7: If the Commission determines that refunds and/or surcharges are appropriate, how should the refunds and/or surcharges be calculated, what period of time should the refunds and/or surcharges cover and how long should the utility be permitted to complete the refunds and/or surcharges?

RECOMMENDATION: If the Commission orders that refunds and/or surcharges are appropriate, SSU should submit within 14 days of the date of the Agenda Conference, the information as detailed below for the purposes of verification. The refunds and/or surcharges should cover the period between the initial effective date of the uniform rate up to and including the date the interim rates in Docket No. 950495-WS were implemented. Consistent with the GTE decision, customers not receiving service during this time period should not receive a refund nor be surcharged. Any refunds should be made with interest pursuant to Rule 25-30.360, Florida Administrative Code, and any surcharges should be assessed with the appropriate amount of interest. Refunds should be made as a credit to the customers' bills. SSU should be required to file refund reports pursuant to Rule 25-30.360(7), Florida Administrative Code. SSU should apply any unclaimed refunds as contributions in aid of construction (CIAC) for the respective plants, pursuant to Rule 25-30.360(8), Florida Administrative Code. (Jaber, Rendell)

STAFF ANALYSIS: In the event the Commission finds it appropriate to order a refund and/or a surcharge, the Commission must establish the methodology to be used, the appropriate time period, and whether interest is appropriate.

Refund and Surcharge Methodology

To determine the refund and/or surcharge for these customers, the revenue requirement allocated to the individual plants under the statewide rate should be calculated, less miscellaneous service revenues. This amount should then be compared to the revenue requirement allocated to the individual plants under the modified stand-alone rates, less miscellaneous service revenues. The resulting percentage difference would then be applied to the service revenues collected from each customer of those plants, during the time the refund and/or surcharge is ordered. That result would be the refund and/or surcharge due to the water and wastewater customers. Refunds should be made as a credit to the customers' bills. As stated earlier, in its brief, SSU suggests that the Commission limit the offsetting effects of refunds and surcharges to those persons who were in fact customers of SSU during the pendency of the appeal and remand proceedings. In the GTE decision, the court found that "no customer should be subjected to a surcharge unless that customer received GTE services during

the disputed period of time." GTE at S101. Consistent with the GTE decision, Staff recommends that SSU customers not receiving service during the period of time uniform rates were in effect should not receive a refund nor be surcharged.

Refund and Surcharge Period

The Court has determined that uniform rates should not have been implemented for any period of time in this docket because the finding that SSU's facilities and land were functionally related was not made. The utility implemented the final rates in September, 1993. Therefore, the utility should determine the refunds and/or surcharge for the entire period, from the time the uniform rate was implemented until the interim rates in Docket No. 950495-WS were implemented. The utility should submit the completed calculations of the refund and surcharge amounts within 14 days of the date of the Agenda Conference.

Interest

In its brief on this point, SSU argues that the Commission has the discretion to order refunds without interest. In support, SSU cites to its motion for reconsideration which refers to Rule 25-30.360, Florida Administrative Code. SSU asserts that when the Commission requires a utility to pay interest on refunds, such action is based on the notion that the utility had the use of "excess" customer funds. SSU asserts that in this instance, neither the Commission nor any other party has ever claimed or demonstrated that SSU has collected more revenues than was authorized in the 1993 Final Order. Alternatively, SSU argues that the Commission could allow refunds with interest to some customers and add an offsetting surcharge in the amount of that interest to others. SSU argues that requiring interest without recoupment would impair its revenue requirement.

According to Section 367.081(6), Florida Statutes, the Commission "shall direct the utility to refund with interest at a fair rate to be determined by the commission...." Rule 25-30.360(1), Florida Administrative Code, states that "all refunds ordered by the Commission shall be made in accordance with the provisions of this Rule, unless otherwise ordered by the Commission." (emphasis added).

The interest requirement recognizes the time value of money and the time value of the refund monies should be recognized and passed to the customers along with the refund. This is longstanding Commission practice. See, Order No. 20474, issued December 20, 1988, in Docket No. 880606-WS: In re: Complaint by

Kelly Tractor Co. Inc. against Meadowbrook Utility Systems, Inc. regarding refund for overpayments in Palm Beach County. In that proceeding, the Commission after reviewing a request similar to SSU's stated:

> Rule 25-30.360, Florida Administrative Code, the Commission's rule on refunds for water and sewer utilities contains a provision regarding interest. It is the Commission's policy to require refunds with interest in recognition of the time value of the customer's money when it was in the utility's hands.

Order No. 20474 at 3. In consideration of the foregoing, the Commission in its order on remand required SSU to make refunds with interest. The only principle that GTE would dictate be used here is fairness. If the Commission orders that interest be added to the refund amount, fairness would require that an appropriate amount be added to the surcharge amount. If the Commission requires a refund and/or surcharge, Staff recommends that such refund and/or surcharge be made with interest. Pursuant to Section 367.081(6), Florida Statutes, the Commission has determined how interest on refunds should be calculated. Rule 25-30.360(4)(a), Florida Administrative Code provides that:

> In the case of refunds which the Commission orders to be made with interest, the average monthly interest rate until refund is posted to the customer's account shall be based on the 30 day commercial paper rate for high grade, unsecured notes sold through dealers by major corporation in multiples of $1,000 as regularly published in the Wall Street Journal.

Rule 25-30.360(4)(b), Florida Administrative Code, provides that the average monthly interest rate shall be calculated for each month of the refund period. Staff believes this same methodology should be followed for surcharges.

Length of Time for Making Refunds and/or Collecting Surcharges

SSU requests that any ordered refunds and corresponding surcharges be implemented over a four-year period to mitigate the rate and financial impacts of the remedy prescribed by the Commission. In staff's original recommendation on remand (Issue 6), staff offered an analysis concerning the possible financial

burden of a refund in the magnitude of $5 to $9 million. Based on the possible effects of weakening SSU's liquidity and interest coverage ratio, Staff recommended that the utility should make the refunds over the same time period that the revenues were collected. However, the Commission found that the refunds should be made within 90 days of the date of Order No. PSC-95-1292-FOF-WS. The Commission further stated that if the utility believed that it could not complete the refunds in this time period that "the utility may petition for an extension of time." Order No. PSC-95-1292-FOF-WS at 8.

While the Commission found that SSU should make the refunds within 90 days, it would be unreasonable to assume that the affected customers could afford payment of the surcharge within the same time period. To continue with the principle of "fairness," SSU should collect the surcharge and make the refunds over the same time period that the uniform rates were in effect. Rule 25-30.360(2), Florida Administrative Code, indicates that "[r]efunds must be made within 90 days of the Commission's order unless a different time frame is prescribed by the Commission." (emphasis added). Due to the extraordinary circumstances in this case, staff believes that a different time frame is warranted.

SSU should be required to file refund reports pursuant to Rule 25-30.360(7), Florida Administrative Code. SSU should apply any unclaimed refunds as contributions in aid of construction (CIAC) for the respective plants, pursuant to Rule 25-30.360(8), Florida Administrative Code.

ISSUE 8: Should Docket No. 920199-WS be closed?

RECOMMENDATION: Yes, the docket should be closed. However, if the Commission determines that refunds and/or surcharges are appropriate in Issue 5, the docket should be administratively closed upon staff's verification that the utility has completed the required refunds and/or collected the appropriate surcharges. Further, the utility's bond can be released upon staff's verification that the refund has been completed. (JABER, RENDELL)

STAFF ANALYSIS: If the Commission determines that no refund and/or surcharge is appropriate, as recommended in Issue 4, then no further action is required and the docket may be closed. However, if the Commission determines that refunds and/or surcharges are appropriate in Issue 5, the docket should be administratively closed upon staff's verification that the utility has completed the required refunds and/or collected the appropriate surcharges. Further, the utility's bond can be released upon staff's verification that the refund has been completed.