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November 26, 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

HAND DELIVERY

Re: Docket No. 950495-WS

Dear Ms. Bayo:

Enclosed herewith for filing in the above-referenced docket on behalf of Southern States Utilities, Inc. ("SSU") are the following documents:

1. Original and fifteen copies of SSU's Response in Opposition to Motion for Reconsideration of Order No. PSC-96-1320-FOF-WS;
2. Original and fifteen copies of SSU's Cross-Motion for Reconsideration of Order No. PSC-96-1320-FOF-WS; and
3. A disk in Word Perfect 6.0 containing a copy of the documents entitled "Res.Opp" and "Cross.Mot."

Please acknowledge receipt of these documents by stamping the extra copy of this letter "filed" and returning the same to me.

Thank you for your assistance with this filing.

Sincerely,

William B. Willingham for
Kenneth A. Hoffman

ACK _____
AFA 3
APP _____
CAF _____
CMU _____
CTR _____
EAG _____
LEG 1
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OPC _____
RCH _____
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cc: All Parties of Record
Trib. 3

KAH/rl

Response
DOCUMENT NUMBER-DATE

12667 NOV 26 96

FPSC-RECORDS/REPORTING

cross-motion
DOCUMENT NUMBER-DATE

12668 NOV 26 96

FPSC-RECORDS/REPORTING

FILED
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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application by Southern States Utilities, Inc. for rate increase and increase in service availability charges for Orange-Osceola Utilities, Inc. in Osceola County, and in Bradford, Brevard, Charlotte, Citrus, Clay, Collier, Duval, Highlands, Lake, Lee, Marion, Martin, Nassau, Orange, Osceola, Pasco, Polk, Putnam, Seminole, St. Johns, St. Lucie, Volusia and Washington Counties.

Docket No. 950495-WS

Filed: November 26, 1996

SOUTHERN STATES UTILITIES, INC.'S RESPONSE IN OPPOSITION TO MOTION FOR RECONSIDERATION OF ORDER NO. PSC-96-1320-FOF-WS

Southern States Utilities, Inc. ("SSU"), by and through its undersigned counsel, and pursuant to Rule 25-22.060(3)(c), Florida Administrative Code, hereby files its Response in Opposition to the Motion for Reconsideration of Order No. PSC-96-1320-FOF-WS ("Final Order") filed by the Citrus County Board of County Commissioners, Sugarmill Woods Civic Association, Inc., Marco Island Fair Water Defense Fund Committee, Inc., Concerned Citizens of Lehigh Acres, East County Water Control District, Spring Hill Civic Association, Inc., Hidden Hills Country Club Association, Inc., Citrus Park Homeowners Association and the Harbour Woods Civic Association (hereinafter referred to collectively as the "Movants").

A. INTRODUCTION AND APPLICABLE STANDARD OF REVIEW

1. The Supreme Court of Florida has set forth the legal standard articulating the limited circumstances under which reconsideration of a final order is appropriate. In Diamond Cab Company of Miami v. King, 146 So.2d 888, 891 (Fla. 1962), the court

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held:

The purpose of a petition for rehearing is merely to bring to the attention of the trial court or, in this instance, the administrative agency, some point which it overlooked or failed to consider when it rendered its order in the first instance. (citations omitted). It is not intended as a procedure for rearguing the whole case merely because the losing party disagrees with the judgment or the order.

See also, Pingree v. Quaintance, 394 So.2d 161 (Fla. 1st DCA 1981). Time and again, the Commission has employed the Diamond Cab Company standard in reviewing the merits of a motion for reconsideration. See, e.g., Order No. PSC-96-1231-FOF-TP issued October 1, 1996 in Docket No. 950985-TP, at 2.

2. The Supreme Court of Florida also has established the means by which a party may establish that reconsideration is appropriate under the standard set forth in the Diamond Cab Company and Pingree decisions. In Stewart Bonded Warehouse, Inc. v. Bevis, 294 So.2d 315, 317 (Fla. 1974), the court held that a petition for reconsideration (and the granting thereof):

[s]hould not be based upon an arbitrary feeling that a mistake may have been made, but should be based upon specific factual matters set forth in the record and susceptible to review. (emphasis supplied).

3. In addition, the Commission will not allow a party to use a motion for reconsideration as a vehicle to raise new arguments and issues not previously raised by that party.¹ Nor is a motion

¹See e.g., In re: Development of Local Exchange Telephone Company Cost Study Methodology(ies), 92 F.P.S.C. 3:666, 667 (1992).

for reconsideration "an appropriate venue for rehashing matters which were already considered" by the Commission.²

4. The Movants' motion fails to meet the standard for reconsideration and must be denied. The Movants offer not one citation to the transcript which would verify a specific factual matter that the Commission allegedly has overlooked in reaching its decision. Nor do the Movants contend that the Commission made a mistake of law with respect to any issue raised in their motion.

5. The motion raises a number of arguments not raised in Movants' Amended Posthearing Brief. Without regard to the possible corrections and clarifications of the Final Order addressed in paragraphs 5-8 of the motion, Movants' Amended Posthearing Brief offered the following on each issue now raised in the Motion for Reconsideration:

a. Rate case expense for Rutledge, Ecenia law firm - this issue was part of Issue 93. Movants' Amended Posthearing Brief merely adopted OPC's position and said nothing more.³

b. Salary and wage adjustments - these issues were addressed in Issues 80 and 82. Again, in their Amended Posthearing Brief, Movants merely adopted OPC's position.⁴

c. Lehigh and Deltona negative acquisition adjustments - these issues were addressed under Issue 53. The Movants again

²See, e.g., Order No. PSC-96-1231-FOF-TP issued October 1, 1996 in Docket No. 950985-TP.

³Movants' Amended Posthearing Brief, at 54.

⁴Id. at 52.

adopted OPC's position and added two sentences of rhetoric to the effect that SSU allegedly misled the Commission in connection with the Lehigh Utilities, Inc. ("LUI") acquisition.⁵

d. Collier property - this issue was addressed under Issue 8. Rather than stating that they adopted OPC's position, the Movants chose to reiterate OPC's position verbatim. Movants offered no argument.⁶

6. It should be obvious that Movants chose to waive their opportunity to brief certain issues in the Posthearing Brief and are now trying to present their Posthearing Brief in a Motion for Reconsideration. The Commission should summarily reject Movants' attempt to raise all of the new arguments found in their Motion for Reconsideration which were not previously offered for the Commission's consideration in their Posthearing Brief.

7. At the same time, if the Commission were to construe the Movants' adoption of OPC's position on certain issues as an adoption of both OPC's position and argument, the Motion for Reconsideration still must be denied. Movants' arguments on the salary and wage adjustment, negative acquisition adjustment and Collier property issues simply rehash arguments previously offered by OPC and addressed by the Commission. With respect to the rate case expense issue, the expenses for the Rutledge, Ecenia firm were not even discussed by OPC in its Posthearing Brief and are now raised for the first time by Movants in their Motion for

⁵Id. at 50.

⁶Id. at 41.

Reconsideration. Again, such new arguments are not appropriate for reconsideration and should be rejected.

SSU now will address each of the issues raised in the Movants' Motion for reconsideration.

B. CORRECTIONS OR CLARIFICATIONS OF MATHEMATICAL ERRORS

8. In paragraph 5 of their Motion, Movants point to discrepancies in the Final Order concerning certain revenue requirement figures. SSU has analyzed the Final Order and attachments and maintains that the correct revenue figures for the two years immediately following the effective date of the final rate tariffs (which include the fifty basis point downward adjustment) and the revenue figures which take effect after the first two years are as follows:

Revenue for first 2 years with 50 basis point downward adjustment

Water \$33,389,617

Wastewater \$24,701,470

Revenue after 2 years without 50 basis point downward adjustment

Water \$33,645,255

Wastewater \$24,864,844

The above revenue figures include miscellaneous revenues.

9. Next, in paragraph 6 of their Motion, Movants request an acknowledgment that rates will not change after the return on equity adjustment expires in two years. This request is absurd. The Commissioners thoroughly discussed this issue during the Agenda Conference and determined that there would be a rate change consistent with the final approved revenue requirement to which SSU

is being deprived for two years (see Deason dissent, page 266).

10. Movants also suggest in paragraph 6 that the Final Order should show "the total revenue subsidies either paid or received by each service area for each of the rate structure options presented to, and considered by, the Commission."⁷ The Movants' suggestion is ludicrous and should be rejected by the Commission. The issue of alleged "subsidies" flowing between SSU's service areas is a rate structure issue raised by some of the Movants (who appear to have conflicting interests) during the hearing. The Movants have not requested reconsideration of any rate structure issue. Further, the Commission is under no statutory obligation to decipher alleged "subsidies" for each possible rate structure it addressed before voting to approve the cap band rate structure reflected in the Final Order. The Commission must reflect SSU's final rates and charges in its Final Order to permit SSU to file tariff sheets reflecting Commission approved final rates and charges (which SSU has done). The Movants' request that the Final Order be amended to include other extraneous information, which might prove useful to Movants on appeal, should be rejected. Movants cite no authority in support of their request nor do they point the Commission to any mistake of fact or law which would support a requirement that final orders in water and wastewater rate cases must now reflect dollar amounts reflecting the difference between the alleged stand-alone cost of service and final rates for specific service areas.

⁷Motion for Reconsideration, at 4.

11. With respect to the concerns expressed in paragraph 7, the water revenue requirements reflected in the Final Order do include miscellaneous revenues, but those miscellaneous revenues were not included for purposes of calculating the water rates. While the Final Order does not directly reflect "factored gallonage" for wastewater customers, the Final Order appears to accomplish the effect of factoring gallonage by using a ratio of residential to commercial usage in establishing wastewater rates.

12. The issue raised concerning the Palm Valley water service area does not merit reconsideration. Movants correctly note that a total of 23,624,000 gallons of 1994 consumption should have been used in the calculation of rates. SSU disagrees with the remainder of the Movants' calculations. SSU calculates a difference of \$65,993 in revenue requirements between the final rates for Palm Valley reflected in the Final Order and a gallonage charge of \$6.79 which would result from application of the 23,624,000 consumption figure.⁸ The \$65,993 is clearly *de minimus* when compared with SSU's total revenue requirement of some \$58 million.⁹ Also, any change in the Palm Valley rate must be reflected in a change to the

⁸SSU calculates the \$6.79 gallonage charge by multiplying the \$272,902 revenue requirement (without miscellaneous revenues) by 60% (the gallonage charge percentage) and dividing the total by 24,132,258 gallons for 1996. The 1996 consumption figure is derived by multiplying 1994 consumption of 23,624,000 by Movants' 1.07% annual growth rate (it appears Movants utilized an annual growth rate of 7% instead of 1.07%). The \$6.79 gallonage charge together with the base facility charge of \$38.29 when multiplied by the 2,548 1996 bills, yields a revenue requirement reduction of \$65,993.

⁹Final Order, at 206.

rate of remaining customers so that SSU's total revenue requirement remains unimpaired. The Commission should deny Movants' request to adjust the Palm Valley gallonage charge. SSU already has filed and received approval of its final tariffs. Any adjustment of the Palm Valley gallonage charge may result in a refund to Palm Valley customers. If so, in order to avoid impairment of SSU's total revenue requirements approved by the Commission, and pursuant to GTE Florida, Inc. v. Clark, 668 So.2d 971 (Fla. 1996), the Commission must allow SSU to collect offsetting surcharges from remaining customers.

C. RATE CASE EXPENSE FOR THE RUTLEDGE, ECENIA LAW FIRM

13. There is no basis for reconsideration of the rate case expense allowed by the Commission for the Rutledge, Ecenia law firm. Movants' Motion, as it pertains to this issue, should be denied on the following grounds:

a. Movants failed to address the issue of the Rutledge, Ecenia legal fees in their Amended Posthearing Brief. Adopting and relying on OPC's posthearing position, Movants overlook the fact that OPC did not take issue with the Rutledge, Ecenia legal fees in OPC's Posthearing Brief. As previously discussed, Movants may not raise issues for the first time in a Motion for Reconsideration. This is precisely what Movants attempt to do with respect to this issue and such attempt must be denied.

b. Turning to the merits of the inappropriately raised new arguments, Movants primarily rely on the Chairman's exclusion of Late-filed Exhibits 257 and 258 from the record as grounds for its

position that the Rutledge, Ecenia legal fees are limited to the amount reflected in the invoices included in Exhibit 256 which was admitted into the record. The Final Order appropriately rejects this position. Exhibit 256 reflected actual legal fees and costs incurred for the Rutledge, Ecenia firm through March 31, 1996. The Movants essentially ask the Commission to deny SSU recovery of the expenses incurred for the legal services of the Rutledge, Ecenia firm from April 1, 1996 through the present date and continuing forward through the completion of all matters which may arise before the Commission in this docket. Such matters include, but are not limited to, preparation and participation in written discovery, depositions, and various motions; preparation for hearing; participating in the final hearing; preparation of late-filed exhibits and SSU's Posthearing Brief; and preparation of SSU's response to the Movant's Motion for Reconsideration. Based on the record evidence and past experience in determining allowable rate case expense, the Commission appropriately and reasonably allowed \$175,000 in rate case expense for the Rutledge, Ecenia firm for what was acknowledged to be the largest water and wastewater rate case in Commission history.¹⁰ In light of the foregoing facts, the Commission's discretion and decision should not be disturbed on reconsideration.

14. As further support for their Motion for Reconsideration on this issue, Movants offer the Commission the following fiction:

¹⁰Final Order, at 175-176, citing Florida Crown Util. Servs., Inc. v. Utility Regulatory Bd. of Jacksonville, 274 So.2d 597, 598 (Fla. 1st DCA 1973).

10. Movants would suggest to the Commission that Commissioners Deason and Kiesling correctly determined that general observations that a law firm must have performed some level of work by just being present at a hearing, offering exhibits (recall that utility staff counsel served the same function) and signing a brief are no evidentiary substitute for the billing records and time sheets expected in all other cases and typically relied upon for the record proof that work was claimed to have been accomplished, that it was, in fact, necessary to the case, and that the amount being requested was reasonable.¹¹

The transcript of the July 31, 1996 Special Agenda Conference (at page 313) as well as the dissenting opinions of Commissioners Kiesling and Deason¹² confirm that Commissioners Kiesling and Deason dissented only to the inclusion of the \$45,000 in travel expenses approved by the majority and would have removed these expenses from rate case expense for this proceeding. The Movants' failure to provide a citation to the transcript of the July 31 Special Agenda or the Final Order is not surprising in light of the fact that there is nothing in the transcript or Final Order reflecting a dissent on the part of Commissioner Kiesling or Commissioner Deason to that part of the Staff Recommendation recommending recovery of \$175,000 in legal fees for the Rutledge, Ecenia firm.

D. SALARY AND WAGE ADJUSTMENTS

15. Perhaps no issue received more attention and meticulous scrutiny from the Commission than Issues 80 and 82 concerning SSU's proposed salary and wage adjustments. The testimony of the

¹¹Motion for Reconsideration, at 6-7.

¹²Final Order, at 268.

witnesses and the arguments raised in the Posthearing Briefs of SSU and OPC are discussed extensively by the Commission on pages 142-150 of the Final Order. It is simply not credible to assert that the Commission overlooked any of the evidence or arguments offered by the parties.

16. In light of the Commission's extensive analysis, the Movants make no attempt to demonstrate that the Commission overlooked any evidence of record or made a mistake of fact or law in reaching its conclusions. Instead, Movants pull a proposed total adjustment of 2% to 4% out of the air and ask the Commission to substitute their proposal. Movants offer no citation to the record for their new proposed adjustment.

17. With respect to the salary increases totalling 5.75% for merit increases, promotional increases, licenses attainment and equity adjustments, the Commission weighed the testimony of SSU witness Lock and OPC witness Katz and determined that the 5.75% total proposed adjustment was reasonable, necessary and prudent.¹³ Movants' disagreement with the conclusion reached by the Commission provides no factual or legal basis for reconsideration.

18. With respect to the market salary adjustment based on the Hewitt Study intended to bring SSU's salaries to a more competitive level, Movants ignore the fact that the Commission essentially tracked the rationale and conclusion offered by OPC in OPC's Posthearing Brief. SSU requested a 4.765% increase to its projected 1996 total salary budget based on the Hewitt Study. The

¹³Final Order, at 150.

Commission weighed the evidence and arguments presented by SSU and OPC on a number of issues including Mr. Katz's mismatch of SSU's salary and revenue figures to those of other utilities, Mr. Katz's contention that the Hewitt Study should be rejected on the ground that it did not compare the salaries of SSU's employees to those of employees of other utilities in the same geographic location, the exclusion of the Florida League of Cities salary data concerning salaries for employees working in cities with population under 10,000 and the issues concerning SSU's exceedingly high turnover rate. Based on its review of the evidence, the Commission determined that SSU had demonstrated the need for some level of increase to bring its salaries closer to market level. In OPC's Posthearing Brief, OPC offered the following conclusion:

Locke (sic) states that salaries within +/- 5% of the market are fully competitive. Locke (sic), Tr. 1990. Therefore, even if we ignore excessive executive compensation and assume for the sake of argument that the Hewitt Study is correct, the company is still within 2.7% of fully competitive salaries without any adjustments whatsoever.¹⁴

Tracking OPC's analysis, the Commission determined that an increase of 2.7% based on the Hewitt Study to make SSU's salaries fully competitive was reasonable and appropriate.¹⁵ Movants' request that the Commission reweigh the evidence on this issue and impose a total salary increase of 2% to 4% should be rejected.

¹⁴OPC Posthearing Brief, at 112.

¹⁵Final Order, at 150.

19. Movants also ask the Commission to "revisit the issue of a negative acquisition adjustment at Lehigh, as well as Deltona..."¹⁶ Their request should be denied. As recognized by the Commission in the Final Order, this is the fourth time the Commission has considered and rejected the prospect of a negative acquisition adjustment in connection with SSU's purchase of the LUI land and facilities.¹⁷ The first occasion arose in the transfer docket where the Commission determined that the transfer of stock from Land Resources Corporation/LUI to Seminole Utility Company, an affiliate of SSU, had no impact on rate base.¹⁸ OPC then raised the issue in the LUI rate case. The Commission rejected OPC's request for a negative acquisition adjustment on the ground that the acquisition was made pursuant to a stock transfer.¹⁹ OPC requested reconsideration which was denied.²⁰

20. In the instant case, OPC again asked the Commission to impose a negative acquisition adjustment for the LUI land and facilities. OPC offered the testimony of Ms. Dismukes who argued that it was appropriate to revisit the issue on the ground that recent income tax returns of Topeka Group, Inc. allegedly

¹⁶Motion for Reconsideration, at 11.

¹⁷Final Order, at 101.

¹⁸In re: Application for the transfer of majority organizational control of Lehigh Utilities, Inc. from Land Resources Corporation to Seminole Utility Company, 91 F.P.S.C. 11:514, 516 (1991).

¹⁹In re: Application for a rate increase in Lee County by Lehigh Utilities, Inc., 93 F.P.S.C. 2:775, 788 (1993).

²⁰Id., 93 F.P.S.C. 7:319, 320-21 (1993).

demonstrate that the non-utility assets are worth more than the \$34 million allocated to such assets by Lehigh Acquisition Corporation pursuant to the transfer which allocation was confirmed by the 1991 independent market valuation of Raymond James & Associates.

21. In its motion, the Movants regurgitate the arguments offered by OPC in its Posthearing Brief. First, that the supposed change in circumstances offered by Ms. Dismukes suggests that it is now appropriate for the Commission to revisit the issue of a negative acquisition adjustment for the LUI land and facilities. Second, that the Commission must reevaluate its acquisition adjustment policy and require the utility to bear the burden of establishing that a negative acquisition adjustment should not be imposed where the rate base of the acquired assets is greater than the consideration provided for such assets.²¹

22. The Commission considered and rejected the arguments of OPC which are now reflected in the Motion for Reconsideration. After considering and analyzing the testimony of SSU witness Vierima and OPC witnesses Dismukes, Larkin and DeRonne, the Commission found:

a. that it was appropriate to continue its acquisition adjustment policy established in Order No. 25729 issued February 17, 1992 which provides that absent extraordinary circumstances, the purchase of a utility system at a premium or discount should not affect rate base. The Commission emphasized that its acquisition adjustment policy has created "an incentive for larger

²¹OPC Posthearing Brief, at 80-83.

utilities to acquire some, troubled utilities" and provides "a much needed incentive for acquisitions";²²

b. that "Ms. Dismukes' argument that the Commission's decision in the Lehigh rate case was factually inaccurate or that the facts have dramatically changed is not convincing." The Commission also voted that the fact that the fair market value of the non-utility assets may have increased is irrelevant to the issue of whether an acquisition adjustment is appropriate for the LUI land and facilities;²³

c. that no acquisition adjustment is appropriate since the transaction involved the sale of stock, not assets;²⁴ and

d. that OPC failed to establish the existence of extraordinary circumstances.²⁵

23. As a "throw in," Movants also ask the Commission to revisit the Commission's denial of a negative acquisition adjustment for the Deltona land and facilities. Movants offer no basis for reconsideration other than their disagreement with the Commission's reaffirmed acquisition adjustment policy.

24. For the foregoing reasons, the Motion for Reconsideration as it pertains to the request for negative acquisition adjustments for the Lehigh and Deltona land and facilities should be denied.

²²Final Order, at 101.

²³Id. at 101-102.

²⁴Id. at 102.

²⁵Id. at 102.

E. COLLIER COUNTY PROPERTY

25. Finally, Movants request the Commission to reconsider its determination that the 212 acres of property purchased by SSU as a source of water supply be included in rate base. The basis for the Movants' Motion is their agreement with the testimony of staff auditor Dodrill who recommended that portions of the land be classified as non-utility. The Movants' support of testimony considered and rejected by the Commission does not provide a basis for reconsideration. As reflected in the Final Order, the Commission considered the testimony of staff witness Dodrill and SSU witnesses Terrero and Dilg on this issue. While acknowledging that Mr. Dodrill raised valid concerns concerning the classification of the land for accounting purposes, the Commission determined that it was not appropriate to remove any of the land from rate base. The Commission determined that the evidence supported the inclusion of all 212 acres of the Collier property in rate base. The Commission predicated its conclusion on the following findings of facts:

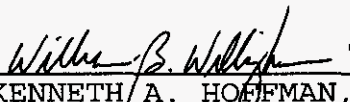
The purchase of this amount of land incorporates less acreage than what the utility was previously leasing from the Colliers for the same purpose. Further, the utility's anticipated construction of an ASR well on this site could leave the utility vulnerable to unauthorized users of its stored water if it did not have control over that surface land covering the higher concentrations of the stored water. Finally, this site is indeed strategic in that SSU plans to develop a wellfield on Section 35. In addition to the lakes, the Collier property contains ground storage to hold water when

that wellfield begins producing.²⁶

26. As with the other issues raised in the Motion for Reconsideration, Movants again fail to point the Commission to any evidence that it overlooked in determining that the Collier property should be included in rate base. Accordingly, Movants' Motion for Reconsideration on this issue should be denied.

WHEREFORE, for the foregoing reasons, SSU respectfully requests that the Commission enter an Order denying Movants' Motion for Reconsideration.

Respectfully submitted,


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²⁶Final Order, at 40.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of Southern States Utilities, Inc.'s Response in Opposition to Motion for Reconsideration of Order No. PSC-96-1320-FOF-WS was furnished by U. S. Mail to the following on this 26th day of November, 1996:

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