

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

M E M O R A N D U M

SEPTEMBER 4, 1997

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

FROM: DIVISION OF WATER & WASTEWATER (WILLIS, RENDELL, CHASE) *WJ*
DIVISION OF LEGAL SERVICES (JABER) *JR* *QC* *bl*
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RE: DOCKET NO. 920199-WS - APPLICATION FOR RATE INCREASE IN
BREVARD, CHARLOTTE/LEE, CITRUS, CLAY, DUVAL, HIGHLANDS,
LAKE, MARION, MARTIN, NASSAU, ORANGE, OSCEOLA, PASCO,
PUTNAM, SEMINOLE, VOLUSIA, AND WASHINGTON COUNTIES BY
SOUTHERN STATES UTILITIES, INC.; COLLIER COUNTY BY MARCO
SHORES UTILITIES (DELTONA); HERNANDO COUNTY BY SPRING
HILL UTILITIES (DELTONA); AND VOLUSIA COUNTY BY DELTONA
LAKES UTILITIES (DELTONA)

AGENDA: SEPTEMBER 9, 1997 - REGULAR AGENDA - INTERESTED PERSONS
MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: S:\PSC\LEG\WP\920199EM.WTR

CASE BACKGROUND

On May 11, 1992, Florida Water Services Corporation, formerly known as Southern States Utilities, Inc. (FWSC, 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. 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, 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

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(OPC). On October 19, 1993, the utility filed a Motion to Vacate Automatic Stay, which the Commission granted by Order No. PSC-93-1788-FOF-WS, issued December 14, 1993.

On April 6, 1995, 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 Utils., Inc., 656 So. 2d 1307 (Fla. 1st DCA 1995). 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, FWSC was ordered 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, FWSC filed a Motion for Reconsideration of Order No. PSC-95-1292-FOF-WS. At the February 20, 1996, Agenda Conference, the Commission voted, inter alia, to deny FWSC'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, 668 So. 2d 971 (Fla. 1996). By Order No. PSC-96-0406-FOF-WS, issued March 21, 1996, after finding that the GTE decision may have an impact on the decision in this case, the Commission voted to reconsider on its own motion, the entire decision on remand.

By Order No. PSC-96-1046-FOF-WS, issued August 14, 1996, the Commission affirmed its earlier determination that FWSC was required to implement the modified stand-alone rate structure and make refunds to customers. However, the Commission found that FWSC could not impose a surcharge to those customers who paid less under the uniform rate structure. The utility was ordered to make refunds (within 90 days of the issuance of the order) to its customers for the period between the implementation of final rates in September, 1993, and the date that interim rates were placed into effect in Docket No. 950495-WS.

On September 3, 1996, FWSC notified the Commission that it had appealed Order No. PSC-96-1046-FOF-WS to the First District Court of Appeal. On that same date, FWSC filed a motion for Stay of Order No. PSC-96-1046-FOF-WS. By Order No. PSC-96-1311-FOF-WS, issued October 28, 1996, the Commission granted FWSC's motion for stay. FWSC implemented the modified stand-alone rate structure for

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the facilities that were included in the recent rate case, Docket No. 950495-WS, during interim. However, the Spring Hill facility was not included in Docket No. 950495-WS and the rate structure for that facility was not changed at that time. On November 12, 1996, OPC filed a Motion for Reconsideration and Clarification or, in the Alternative, Motion to Modify Stay, wherein OPC essentially requested that the Commission order the utility to implement modified stand-alone rates for the Spring Hill customers. By Order No. PSC-97-0175-FOF-WS, issued February 14, 1997, the Commission denied OPC's motion for reconsideration and clarification, but granted OPC's alternative motion to modify the stay. The Commission modified Order No. PSC-96-1046-FOF-WS to reflect that only FWSC's refund obligation was stayed pending appeal, and that FWSC was required to implement the modified stand-alone rate structure for FWSC's Spring Hill facility in Hernando County, consistent with prior Commission Orders Nos. PSC-95-1292-FOF-WS and PSC-96-1046-FOF-WS.

On February 28, 1997, FWSC filed a Motion For Reconsideration of Order No. PSC-97-0175-FOF-WS and Motion For Stay of Order No. PSC-97-0175-FOF-WS Pending Disposition of Motion for Reconsideration, which the Commission denied by Order No. PSC-97-0552-FOF-WS, issued May 14, 1997. On June 17, 1997, the First District Court of Appeal issued its opinion in Southern States Utils., Inc. v. Florida Public Service Comm'n, reversing the Commission's order implementing the remand of the Citrus County decision.

On July 16, 1997, Senator Ginny Browne-Waite and Mr. Morty Miller filed a Petition to Intervene and Motion to Compel Rate Reductions and Rate Refunds and for Maximum Penalty. At the August 5, 1997 Agenda Conference, the Commission granted Sen. Browne-Waite and Mr. Miller's petition to intervene. The Commission required Florida Water Services to provide an exact calculation by service area of the potential refund and surcharge with and without interest as of June 30, 1997. This information was to be provided to staff and the parties by August 29, 1997. The Commission also allowed all parties to file briefs by September 30, 1997 on the appropriate action the Commission should take in light of the Southern States decision. Accordingly, the Commission chose not to consider the motion to compel refunds pending the filing of briefs. This vote was memorialized by Order No. PSC-97-1033-PCO-WS, issued August 27, 1997.

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On August 28, 1997, this report was filed with the Division of Records and Reporting by FWSC. Based upon a review of the report, staff believes that several concerns must be addressed. This recommendation addresses staff's concerns with FWSC's refund/surcharge report.

DISCUSSION OF ISSUES

ISSUE 1: Should Florida Water Services be required to provide a revised refund/surcharge report, as discussed in staff analysis, within seven calendar days of the Commission vote?

RECOMMENDATION: Yes. Florida Water Services should be required to provide a revised refund/surcharge report, as discussed in staff analysis, to all parties by September 16, 1997. FWSC should also be required to file the supporting documentation on computer disc in a format which may be converted to Lotus 1-2-3 by Staff. FWSC should be placed on notice that any further variations will not be tolerated, and may result in further proceedings addressing possible penalties. Further, the deadline for all parties to file briefs, as ordered in Order No. PSC-97-1033-PCO-WS, should be extended seven days to October 7, 1997. (RENDELL, WILLIS, CHASE, JABER)

STAFF ANALYSIS: As stated in the case background, at the August 5, 1997 Agenda Conference, the Commission voted to require FWSC to provide an exact calculation by service area of the potential refund and surcharge with and without interest as of June 30, 1997. This information was to be provided to staff and the parties by August 29, 1997. This vote was memorialized by Order No. PSC-97-1033-PCO-WS, issued August 27, 1997.

On August 28, 1997, this report was filed with the Division of Records and Reporting by FWSC. Based upon a review of the report, staff believes that several concerns must be addressed. Staff's concerns with the refund/surcharge report are as follows:

- Both a refund amount and a surcharge amount are indicated for several service areas for the same service (water/wastewater)
- There is no amount of surcharge indicated for Florida Central Commerce Park
- There are no supporting schedules for FWSC calculations
- There were no explanations for the positive/negative references used for the refund/surcharge amounts in the report; Negative refunds and/or a positive surcharges were indicated for several service areas, inconsistent with other amounts in the respective columns

Therefore, staff believes that Florida Water Services should be required to immediately submit revised reports which addresses

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all of staff's concerns. First, the report should provide supporting schedules that detail the calculations of surcharges/refunds by service area. If different calculations are performed for different periods, these calculations should be shown separately. Staff is aware of four different periods which should be addressed in FWSC calculations. These are as follows:

- 1) September 15, 1993, the date uniform rates became effective, through December 12, 1993, the date the 1993 index became effective
- 2) December 12, 1993 through July 25, 1994, the date the 1994 pass-through and index became effective
- 3) July 25, 1994 through September 16, 1994, the date the rates of Docket No. 930880-WS became effective
- 4) September 16, 1994 through January 23, 1996, the date interim rates of Docket No. 950495-WS became effective

Further for the Spring Hill service area, a separate calculation should be performed for the period January 23, 1996 through June 14, 1997, the date new rates became effective in Hernando county. This amount should not be combined with the calculations addressed in (1) through (4) above. This amount will be addressed separately, as discussed in Order No. PSC-97-1033-PCO-WS. Therefore, it is imperative that this amount be contained in a separate calculation and shown on a separate spreadsheet.

The calculation methodology should be consistent with the methodology prescribed in Order No. PSC-95-1292-FOF-WS, issued October 19, 1995. FWSC should also be required to file the supporting documentation on computer disc in a format which may be converted to Lotus 1-2-3 by Staff.

Staff does not believe that both a refund amount and a surcharge amount should be indicated for the same service area for the same type of service (water/wastewater). In its revised report, if FWSC provides an amount for both a refund and a surcharge, an explanation should be provided as to why both amounts are shown for the same service area. If there are refund and surcharge amounts provided for more than one service area, explanations should be provided for each service area. As to the Florida Central Commerce Park service area, staff believes that an amount of surcharge should be indicated. If FWSC does not show an amount in the revised report, an explanation should be provided as

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to why any potential surcharge, if ordered, would not be applicable to this service area.

FWSC should also provide an explanation as to the positive/negative references used in the amounts of refunds/surcharges. In other words, in columns where the majority of amounts appear positive, there are amounts in parenthesis, and in columns where the majority of amounts appear in parenthesis, there are positive amounts. FWSC should be required to provide footnotes to explain why some refunds are shown as negative numbers and some are shown as positive. This should also be explained for the surcharge amounts.

Staff believes that this information is readily available to FWSC, in that it was the supporting data used by FWSC to supply the report/surcharge report filed August 28, 1997. Therefore, staff recommends that Florida Water Services should be required to provide a revised refund/surcharge report, as discussed in staff analysis, to all parties by September 16, 1997.

FWSC should be placed on notice that the provisions of the items required in the revised report should be followed consistently. FWSC should also be placed on notice that any further variations will not be tolerated, and may result in further proceedings addressing possible penalties.

In Order No. PSC-97-1033-PCO-WS, the Commission ordered that all parties may file briefs as set forth in the body of that order, by September 30, 1997. Due to staff's recommendation that FWSC should file revised refund/surcharge reports by September 16, 1997, the time to file briefs should be extended by seven days to October 7, 1997.