

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

OCTOBER 23, 1997

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING

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

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: NOVEMBER 4, 1997 - REGULAR AGENDA - PARTIES MAY
PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE LOCATION: I:\PSC\LEG\WP\920199RE.RCM

CASE BACKGROUND

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

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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 to make refunds to customers. However, the Commission determined that FWSC could not impose a surcharge on 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. This decision was appealed by the utility to the First District Court of Appeal. 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 our order implementing the remand of the Citrus County decision. 22 Fla. L. Weekly D1492 (Fla. 1st DCA 1997).

By Order No. PSC-97-1033-PCO-WS, issued August 27, 1997, the Commission required FWSC to provide an exact calculation by service area of the potential refund and surcharge amounts with and without interest as of June 30, 1997. By that Order, the Commission also allowed all parties to file briefs on the appropriate action the Commission should take in light of the Southern States decision. After two extensions, the briefs are currently due on November 5, 1997. On September 11, 1997, FWSC filed a motion for reconsideration of Order No. PSC-97-1033-PCO-WS. On September 18, 1997, OPC timely filed a response.

DISCUSSION OF ISSUES

ISSUE 1: Should FWSC's motion for reconsideration and clarification of Order No. PSC-97-1033-PCO-WS be granted?

RECOMMENDATION: No, FWSC's motion for reconsideration should be denied because there has been no demonstration of mistake of fact or law. However, the Commission should clarify that the Spring Hill circumstances can be addressed in the November 5, 1997, briefs. (JABER, RENDELL, CHASE)

STAFF ANALYSIS: In its motion for reconsideration and clarification, FWSC requests reconsideration and clarification of the following portion of Order No. PSC-97-1033-PSC-WS addressing the Spring Hill facilities.

As mentioned earlier, FWSC implemented the modified stand-alone rate structure for all of its facilities included in Docket No. 950495-WS during interim. Therefore, the period of time for determining any refund or surcharge amount for those facilities ends with the implementation of the interim rates. However, the Spring Hill facilities were not included in Docket No. 950495-WS and the Spring Hill rates were not changed at that time. We ordered FWSC to implement modified stand-alone rates at its Spring Hill facility. As point of information, we received a copy of a settlement agreement between Hernando County and the utility wherein they have agreed on a prospective rate change which became effective June 14, 1997.

As a result of these circumstances, the period of time for a refund due to the rate structure change is longer for the Spring Hill facilities than for others. Spring Hill will be part of any decision that is ultimately made regarding refunds and surcharges up to the time modified stand-alone rates were implemented for all other FWSC facilities. However, we recognize that there is also a separate issue of the appropriate refund for this facility for the period of time since modified stand-alone rates were implemented for the other facilities. We will address the Spring Hill situation after the parties have filed briefs.

Order at pages 7 and 8. (emphasis added) FWSC seeks to have the Commission reconsider or clarify the above portion of the order by stating that the Commission has not made any final determinations

concerning whether the Spring Hill customers should receive a refund for the January 1996 through June 14, 1997 time period and if so, whether the costs of any such refunds should be borne by the utility. Further, the utility seeks to have the Commission clarify that the parties may include argument in their briefs on this issue. In support of its motion, FWSC argues that the language of the order indicates that the Commission appears to have prejudged the issue regarding the refunds to the Spring Hill customers in favor of the intervenors. Specifically, FWSC states that the language could be construed to suggest that refunds are to be made for the Spring Hill customers for the January, 1996 through June 14, 1997 time period. Further, FWSC argues that there is no logic or rationale behind the Commission's decision to treat the Spring Hill refund/surcharge issues separately from the other issues which will be addressed in the briefs.

The remainder of the utility's motion addresses the utility's request to notice its customers regarding the potential impact from refund and/or surcharges. Since this issue was addressed by the Commission at the October 7, 1997 Agenda Conference, no discussion is necessary here.

On September 18, 1997, OPC filed its response to FWSC's motion. OPC basically requests that the Commission reject any attempt by FWSC to pass the cost of providing the refunds to Spring Hill customers to the utility's other customers. In particular, OPC argues that FWSC would receive a windfall, which is contrary to the principle set forth in the GTE case that equity applies to both ratepayers and the utility.

Rule 25-22.060(1), Florida Administrative Code, permits a party who is adversely affected by an order of the Commission to file a motion for reconsideration of that order. The standard for reconsideration is set forth in Diamond Cab Co. of Miami v. King, 146 So. 2d 889 (Fla. 1962). There, the Florida Supreme Court stated that the purpose of a petition for rehearing is merely to bring to the attention of the trial court or the administrative agency a point which it overlooked or failed to consider when it rendered its order in the first instance, and it is not intended as a procedure for rearguing the whole case merely because the losing party disagrees with the judgment. Id. at 891. In Stewart Bonded Warehouse, Inc. v. Bevis, 294 So. 2d 315 (Fla. 1974), the Court found that the granting of a petition for reconsideration should be based on specific factual matters set forth in the record and susceptible to review. We have applied these standards in our review of FWSC's motion.

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The language from Order No. PSC-97-1033-PCO-WS cited above clearly states that the Commission intends to address the Spring Hill situation after the parties have filed briefs. Therefore, the Commission has not yet addressed the issue regarding which party will bear the cost for providing the refunds to the Spring Hill customers and for what period of time. Staff believes that the Commission made clear that it intended to provide the parties with an opportunity to address the Spring Hill situation and other refund/surcharge issues in the briefs. The utility has not adequately shown that the Commission overlooked any point of fact or law. Therefore, FWSC's motion for reconsideration should be denied. To the extent that it was not absolutely clear that parties can include argument related to the Spring Hill circumstances in their brief, the Commission should clarify that parties have the opportunity to include argument on this issue in their briefs.

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ISSUE 2: Should the docket be closed?

RECOMMENDATION: No. (JABER)

STAFF ANALYSIS: This docket should remain open pending final resolution of the remand.