

FLORIDA PUBLIC SERVICE COMMISSION

Fletcher Building
101 East Gaines Street
Tallahassee, Florida 32399-0850

M E M O R A N D U M

January 21 1993

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING

FROM: DIVISION OF LEGAL SERVICES (FEIL) *MF*
DIVISION OF WATER AND WASTEWATER (WILLIS) *WJ*

RE: UTILITY: SOUTHERN STATES UTILITIES, INC.
DOCKET NO. 920199-WS
COUNTY: BREVARD, CHARLOTTE/LEE CITRUS, CLAY, COLLIER,
DUVAL, HERNANDO, HIGHLANDS, LAKE, MARION, MARTIN, NASSAU,
ORANGE, OSCEOLA, PASCO, PUTNAM, SEMINOLE, VOLUSIA,
WASHINGTON

CASE: APPLICATION FOR INCREASED WATER AND WASTEWATER
RATES BY SOUTHERN STATES UTILITIES

AGENDA: FEBRUARY 2, 1993 - CONTROVERSIAL - PARTIES MAY NOT
PARTICIPATE

CRITICAL DATES: NONE

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

CASE BACKGROUND

Southern States Utilities, Inc. and Deltona Utilities, Inc. (hereinafter referred to as the utility or SSU) are collectively a class "A" water and wastewater utility operating in various counties in the State of Florida. On May 11, 1992, the utility filed an application to increase the rates of 127 of its water and wastewater systems regulated by the Commission. Upon the utility's correcting deficiencies to its minimum filing requirements (MFRs), the official date of filing became June 17, 1992.

According to the MFRs, the total annual revenue for the water systems filed in this application for 1991 was \$12,319,321, and the net operating income was \$1,616,165. The total annual revenue for

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the wastewater systems for 1991 was \$6,669,468, and the net operating income was \$324,177. For the systems included in this rate application, the utility serves a total of 75,055 water customers and 25,966 wastewater customers.

The utility requested interim rates designed to generate annual revenues of \$16,806,594 for water and \$10,270,606 for wastewater. This represents a total increase of \$3,981,192 (31.57 percent) for water and \$2,997,359 (41.22 percent) for wastewater. The utility requested final rates designed to generate annual revenues of \$17,998,776 for water and \$10,872,112 for wastewater. This results in a total increase, according to the Utility's MFRs, of \$5,064,353 (40.16 percent) for water and \$3,601,165 (49.53 percent) for wastewater. The test year for both interim and final purposes is the historical period ended December 31, 1991.

By Order No. PSC-92-0832-FOF-WS, issued August 27, 1992, the Commission suspended the utility's requested rates. 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.

Between August, 1992, and November, 1992, the Commission held a total of ten service hearings throughout the state for the purpose of receiving customer testimony for this case. Beginning November 6, 1992, the Commission conducted a five-day technical hearing in Tallahassee. Subsequent to the hearing, the parties submitted briefs. On December 17, 1992, SSU filed a Motion to Strike New Legal Issues in Citrus County's Brief. Citrus County did not file a response. This recommendation addresses SSU's motion.

ISSUE 1: Should the Commission grant Southern States Utilities, Inc.'s Motion to Strike New Legal Issues in Citrus County's Brief?

RECOMMENDATION: The motion should be granted in part and denied in part as set forth below. (FEIL)

STAFF ANALYSIS: Citrus County filed its petition to intervene in this case on October 23, 1992. It did not file a prehearing statement and did not appear at the October 28th prehearing

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conference; thus, the Prehearing Order, Order No. PSC-92-1265-PHO-WS, issued November 4, 1992, lists no issues raised by or positions held by Citrus County. Citrus County was formally granted intervention in Order No. PSC-92-1243-FOF-WS, issued November 2, 1992. Citrus County's participation in this proceeding began at the November technical hearing.

In its motion, SSU argues that Citrus County's brief improperly raises two new legal issues: (1) whether the Commission has statutory authority to set rates other than system-by-system rates and (2) whether the customer notice was defective because it failed to mention the possibility that rates other than system-by-system rates might be established. The Order Establishing Procedure provides that issues not raised prior to the issuance of the Prehearing Order are waived unless good cause is shown, SSU asserts, and Citrus County has not made the requisite good cause showing. SSU also points out that at the hearing, counsel for Citrus County emphasized that he was not attempting to raise any new issues when he announced that he believed the Commission did not have statutory authority to set rates that were not system specific.

As stated in the Case Background above, Citrus County did not respond to SSU's motion. In its brief, Citrus County only confuses its position in this matter. The brief is a six page document which begins with issue 92 as stated in the Prehearing Order. Immediately after the issue, Citrus County states that it adopts COVA's position on the issue. However, Citrus County then has inserted another heading, "Jurisdictional Legal Issue," followed by an issue statement (in question form), a position, discussion, and conclusion. At page 5, Citrus County has repeated this pattern under the heading "Procedural Legal Issue."

For the reasons set forth below, staff recommends that the Commission strike only that portion of Citrus County's brief referring to the "Procedural Legal Issue," which begins at the bottom of page five of the brief and ends on page six.

First, staff notes that the Commission has previously stricken portions of a party's brief when the party raised new issues in its brief. In Order No. PSC-92-0104-FOF-WS, issued March 27, 1992, Docket No. 910114-WU, In re: Application of ECFS for an original certificate in Brevard, Orange and Osceola Counties, the Commission granted ECFS's motion to strike two legal issues raised for the first time in another party's brief. In that case, the Commission

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found that ECFS would be prejudiced by the Commission's considering the new issues--which related to whether ECFS would be exempt--when ECFS had no opportunity to address the factual bases for the issues.

In this instance, the Commission is confronted with what Citrus County itself seems to have labelled as two new issues: statutory authority and procedural due process. Staff believes that Citrus County's position regarding the Commission's statutory authority can fairly be considered under existing issue 92 without any prejudice to SSU. Indeed, when Citrus County announced its concern with statutory authority at the hearing, the presiding officer indicated that he believed Citrus County was merely announcing its position on issue 92 (Tr. 2118-2120) and was not raising a new issue. SSU voiced no objection to Citrus County's new position at the hearing and apparently does not do so now in its motion.

Staff's view regarding Citrus County's perceived noticing flaw, however, is different. Staff does not believe that the Commission can, at this late date, consider Citrus County's claim that the customer notice was deficient without prejudice to SSU. This new issue cannot be said to fall within the scope of an existing issue, and none of the parties have made prior mention that they viewed noticing as an issue. Thus, SSU has had no opportunity whatsoever to address the alleged noticing defect.

If a new issue raised in a brief is one of grave concern and significance, staff might be of a different opinion. However, this is not one of those instances. The Commission cannot realistically expect a utility to give direct notice to the customers of every issue in a rate case that might have an affect on those customers. The tariffs filed with the utility's MFRs reflect the utility's proposed rate structure, which is a variation of the rate structure which Citrus County complains of. Furthermore, OPC, which is charged with representing all of SSU's customers, participated in this proceeding since its inception and was surely aware from the very beginning that rate structure was an issue. The Commission's established noticing procedures are designed to keep customers as informed as reasonably practical, and no one has alleged or proved SSU failed to follow those procedures.