BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Investigation into the appropriate rate structure for SOUTHERN STATES UTILITIES, INC. for all regulated systems in Bradford, Brevard, Citrus, Clay, Collier, Duval, Hernando, Highlands, Lake, Lee/Charlotte, Marion, Martin, Nassau, Orange, Osceola, Pasco, Putnman, Seminole, St. Johns, St. Lucie, Volusia, and Washington Counties.	DOCKET NO. 930880-WS ORDER NO. PSC-95-0047-FOF-WS ISSUED: January 11, 1995

The following Commissioners participated in the disposition of this matter:

J. TERRY DEASON, Chairman
SUSAN F. CLARK
JOE GARCIA
JULIA L. JOHNSON
DIANE K. KIESLING

ORDER DENYING MOTION TO STRIKE, REQUEST FOR ORAL ARGUMENT, AND MOTIONS FOR RECONSIDERATION

BY THE COMMISSION:

BACKGROUND

On September 28, 1993, this Commission initiated, on its own motion, an investigation into the appropriate rate structure for Southern States Utilities, Inc. (SSU). A number of individuals, organizations, and governmental entities were initially involved in the proceeding; however, by the time of the technical hearing, only Citrus and Hernando County (the Counties), the Cypress and Oak Villages Association (COVA), SSU, and the Staff of the Commission remained active participants.

Prior to the technical hearings, we held eleven customer hearings throughout the state to receive testimony from SSU customers regarding their views on the appropriate rate structure for SSU on a going forward basis. We held technical hearings on this matter on April 14 and 15, 1994, in Orlando, and in Tallahassee on May 4, 5, and 10, 1994. At the technical hearings, we received testimony and exhibits from twenty-one witnesses sponsored by SSU, Citrus and Hernando Counties, COVA, and Staff.

By Order No. PSC-94-1123-FOF-WS, issued September 13, 1994, as amended by Order No. PSC-94-1123A-FOF-WS, issued September 27, 1994, this Commission determined that the existing uniform statewide rate structure was the most appropriate rate structure for SSU. On September 28, 1994, the Counties filed a motion for an extension of time within which to file their motion for reconsideration. However, the Counties managed to timely filed their motion for reconsideration of Order No. PSC-94-1123-FOF-WS, along with a request for oral argument thereon. Their motion for extension of time is, therefore, moot. On September 29, 1994, COVA filed a motion for reconsideration of Order No. PSC-94-1123-FOF-WS. On October 7, SSU filed a response to the Counties' motion for reconsideration. On October 13, 1994, SSU filed a motion to strike COVA's motion for reconsideration and a response to the motion for reconsideration subject to its motion to strike. On October 31, COVA filed a response to SSU's motion to strike.

MOTION TO STRIKE COVA'S MOTION FOR RECONSIDERATION

In its motion to strike, SSU argues that COVA's motion for reconsideration should be stricken because it was filed one day late. SSU argues that the deadline for filing for reconsideration is jurisdictional and that, as a matter of law, the Commission may not extend the time within which to file for reconsideration. In support of its argument, SSU cites City of Hollywood v. Public Employees Relations Commission, 432 So.2d 79 (Fla. 4th DCA 1983), in which the Court held that, since neither Chapter 120, Florida Statutes, PERC's rules, nor the Model Rules of Procedure expressly authorized an extension of time to file for reconsideration, PERC erred in granting such an extension.

In its response to SSU's motion to strike, COVA argues that its motion for reconsideration should not be stricken: because it was late due to mishandling by UPS Next Day Air; because COVA did not receive Order No. PSC-94-1123-FOF-WS until the week after it was issued; and because Order No. PSC-94-1123-FOF-WS was amended on September 27, 1994, which, according to COVA, should toll the time for reconsideration.

COVA's arguments regarding UPS Next Day Air or when it received Order No. PSC-94-1123-FOF-WS are not terribly persuasive. However, its argument regarding the amendment to Order No. PSC-94-1123-FOF-WS does have some merit, although we note that the amendment to Order No. PSC-94-1123-FOF-WS was to the dissent, not to the sum and substance of the majority decision. We further note that SSU is not be harmed in any event if we consider COVA's motion

for reconsideration since, as discussed further hereunder, we are denying COVA's motion for reconsideration.

For the reasons discussed above, SSU's motion to strike COVA's motion for reconsideration of Order No. PSC-94-1123-FOF-WS is denied.

COUNTIES' REQUEST FOR ORAL ARGUMENT

Under Rule 25-22.058, Florida Administrative Code, a request for oral argument "shall state with particularity why oral argument would aid the Commission in comprehending and evaluating the issues before it." The Counties' rationale as to why it should be granted oral argument is as follows:

> The Counties believe that the body of the many (sic) order, taken with Chairman Deason's recently released dissent, reveal that major misunderstandings still exist among the full commission regarding CIAC and the implications of uniform rates with respect to CIAC and other factors.

Upon consideration, we find that the record is replete with testimony and other evidence regarding CIAC and the implications of uniform rates on CIAC and other factors. The Counties and COVA have made these arguments throughout this proceeding. The issue of CIAC and uniform rates was exhaustively covered by the Counties and COVA in their post-hearing brief, and argued again in their respective motions for reconsideration. It does not appear, therefore, that oral argument would aid this Commission in comprehending the issue. Accordingly, the Counties' request for oral argument on their motion for reconsideration is denied.

COVA'S MOTION FOR RECONSIDERATION

In its motion for reconsideration, COVA identifies six ways in which it believes we erred. Each of these arguments is discussed, separately, below.

SSU argues that COVA's motion for reconsideration should be rejected because it fails to reach the threshold requirements for reconsideration. In support thereof, SSU cites Diamond Cab Company of Miami v. King, 146 So.2d 889 (Fla. 1962), in which the Supreme Court held that:

> 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 re-arguing the whole case merely because the losing party disagrees with the judgment or the order.

Id., at 891.

SSU also points to Stewart Bonded Warehouse, Inc. v. Bevis, 294 So.2d 315 (Fla. 1974), for the proposition that reconsideration "[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." Id., at 317.

According to SSU, COVA's motion fails the test articulated in Diamond Cab because it consists mainly of re-argument of points argued throughout this proceeding and in COVA's brief. SSU also argues that, although COVA argues that the Commission's decision is based upon factual errors, COVA's motion fails to provide even one transcript cite to facts contained in the record. According to SSU, the Commission, its Staff, SSU, and the other parties should not be compelled to hunt through the record to make COVA's arguments for it. We agree with SSU. However, a discussion of each of COVA's points on reconsideration will be informative in this regard.

COVA's first argument is that we violated its right to procedural due process by considering the "testimony" of Chuck Hill at the agenda conference. It argues that the facts presented by Mr. Hill were not in the record and that COVA was not given an opportunity to cross examine Mr. Hill.

Mr. Hill did not testify at the agenda conference. Virtually everything Mr. Hill had to say was in response to a direct question from one or more of the Commissioners. Mr. Hill was merely carrying out his advisory role. In addition, the only "facts" presented that were not a part of the record or derived therefrom concerned a purely mechanical process; i.e. how Staff would determine a revenue requirement under the various rate structure scenarios. COVA's motion for reconsideration on this point is, therefore, denied.

Second, COVA argues that "[a]t least one Commissioner voted to maintain uniform rates because the record was insufficient to establish what the appropriate capped rates would be." It further argues that we overlooked that "Staff had an obligation but failed to present this information by documents and testimony from the prior rate case...."

COVA is not competent to explain to this Commission, absent an express statement to that effect, why one of our members voted the way she did. COVA has apparently interpreted the Commissioner's comments at the agenda conference to mean that the record did not include the capped rates proposed by SSU in Docket No. 920199-WS. We do not agree with COVA's interpretation. The particular quote is as follows:

> One of my major concerns with any of these other rate structures that we have called transitional, or any of the capped ones is I don't recall anything or certainly not adequate evidence in the record that would help me to know what the appropriate cap is. And so for me, you know, whether we pick $27, or $35, or any of the others of these, to me I would be picking an arbitrary number. Because there is not anything in the record that helps me establish what that appropriate cap is.

The Commissioner's concern was not that the capped rates from Docket No. 920199-WS were not included in the record, but that, under any of the capped rate scenarios, it was not clear where to cap the rates. Moreover, she did not state that that was her reason for voting to maintain the uniform rate structure. COVA's motion for reconsideration on this point is, therefore, denied.

Third, COVA argues that we erred because we failed to consider the unrebutted testimony of the Citrus County Property Appraiser that uniform rates effectively reduced property values at Sugarmill Woods by the amount of CIAC paid. Initially, we note that COVA has not properly characterized the referenced testimony. The Citrus County Property Appraiser made no mention of CIAC. What he actually testified was that the rule of thumb is that, for every dollar in increased utility rates, property values decrease by a factor of ten. Further, we all heard Mr. Schultz' testimony, it is in the record, was covered in COVA's brief, and COVA's argument in this regard was identified in Staff's recommendation. Just because Mr. Schultz' testimony was not discussed in the final order does not mean that we did not consider it. Accordingly, COVA's motion for reconsideration on this ground is denied.

Fourth, COVA argues that we failed to consider the overpayment of CIAC by the customers of Sugarmill Woods, as well as SSU's "proposal" to make CIAC rebates to redress the situation. This argument is simply not true. We clearly considered the disparate levels of CIAC in the systems involved in this docket. There was ample testimony to this effect, and it was discussed both in Staff's recommendation and at the agenda conference. As for SSU's "proposal", although the subject of CIAC refunds was discussed during the hearing, we are not aware of any specific proposal. COVA's motion for reconsideration on this ground is, therefore, denied.

Fifth, COVA argues that we overlooked the "fact" that affordability was not an issue in the proceeding and that we erred by not factoring CIAC payments into the affordability equation. The issue of affordability was developed during the hearing process, and all parties had adequate opportunity to address that issue. There was specific testimony as to both general and specific levels of affordability in the record. Further, as noted above, the level of CIAC was addressed, comprehensively, in Staff's recommendation and was discussed at the agenda conference. We, therefore, reject COVA's motion for reconsideration in this regard.

Finally, COVA argues that we erred by assuming that all customers will eventually benefit from uniform rates. According to COVA, until such time as increased rates reach the cost to serve Sugarmill Wood's customers, these customers will continue to be "subsidy payers." The record is rife with the effects of uniform rates and which way subsidies are flowing and will flow. The record also indicates that SSU intends to make investment in the Sugarmill Woods systems in the near future. The record further demonstrates that combining investment for ratesetting purposes may actually negate the need for rate increases to pay for certain improvements. It cannot, therefore, be said that we did not consider this matter. COVA's motion for reconsideration on this ground is, accordingly, denied as well.

COUNTIES' MOTION FOR RECONSIDERATION

The Counties' motion for reconsideration identifies four basic premises: uniform rates are illegal; the Commission is without authority to consider conservation in setting rates; the Commission is without authority to consider affordability in setting rates; and the Hernando County bulk rate is contrary to the evidence and the law.

In its response, SSU argues that the Counties' motion should be rejected because the motion fails to reach the threshold requirements for reconsideration as articulated in Diamond Cab, 146 So.2d at 891. According to SSU, the Counties' motion consists mainly of re-argument of points which the Counties have already argued throughout this proceeding and in their brief. SSU also argues that, although the Counties argued that the Commission's decision is based upon factual errors, the Counties' motion fails to provide even one transcript cite to facts contained in the record. According to SSU, under Stewart Bonded Warehouse, 294 So.2d at 317, the Commission, its Staff, SSU, and the other parties should not be compelled to hunt through the record to make the Counties' arguments for them. SSU also made specific arguments with regard to each of the Counties points on reconsideration, which will be discussed under each specific point.

The Counties' first argument is that uniform rates are illegal. According to the Counties, "you cannot make customers pay utility rates to support investment or operating costs that do not provide them service." SSU argued that the Counties' point is merely a reargument of their position taken throughout this proceeding. We agree. Moreover, the Counties' claim that uniform rates are illegal is, quite simply, not the case. The record is clear that subsidization is inherent in any rate structure other than a customer specific rate structure. To invoke an example used over and over in this proceeding, the customer who lives 100 yards from the utility plant pays the same rate as the customer who lives ten miles from the plant. Clearly, the cost to serve the customer next to the plant is less than that to serve the more remote customer. That customer is, therefore, supporting investment and operating costs that are not providing the customer service. We, therefore, reject this point of the Counties.

Next, the Counties argue that we do not have any authority to consider conservation in ratesetting. SSU argues that this is mere reargument. We agree. This is the exact same argument that the Counties have asserted throughout this proceeding and which we have specifically rejected. As such, the Counties motion for reconsideration on this ground is denied.

The Counties also argue that we are without authority to set rates based upon affordability, and that there is no evidence to support whether uniform rates are, in fact, affordable. The Counties also argue that "a less onerous capped subsidy rate appears to have been effectively killed by Chuck Hill's lengthy monologue on the increased costs to the Commission and staff that would result from having to calculate anything but a straight

mathematical average for uniform rates." SSU contends that the Counties' point is, again, reargument.

We agree with SSU that this point is mere reargument. As for the Counties' argument regarding Mr. Hill's "lengthy monologue", as noted in the discussion on COVA's motion for reconsideration, Mr. Hill's comments were all in response to questions from this Commission. In addition, the Counties are not competent to state the reasoning behind our decision, absent a clear verbalization thereof. Accordingly, the Counties' motion on this point is rejected.

Finally, the Counties argue that the Commission's determination of a bulk service rate for Hernando County is contrary to the law and the evidence. It argues that the approved rate is erroneous because it is derived from an average "of the correct and legal rate of $1.20 with a contrived rate of $2.99 per thousand [gallons]." SSU did not address this point.

This argument is without merit. The record clearly shows that the original bulk rate was calculated using an accepted methodology. The rate approved by this Commission represents that rate, as adjusted by a number of price index increases. It is not an average of the rates, as argued by the Counties. In fact, we note that this Commission specifically rejected both of those rates because we did not believe that either of the cost allocation methodologies accurately depicted Hernando County's situation. The Counties' motion for reconsideration on this ground is, therefore, also rejected.

It is, therefore,

ORDERED by the Florida Public Service Commission that Southern States Utilities, Inc.'s motion to strike the Cypress and Oak Villages Association's motion for reconsideration of Order No. PSC-94-1123-FOF-WS, is denied for the reason set forth in this Order. It is further

ORDERED that the Cypress and Oak Villages Association's motion for reconsideration of Order No. PSC-94-1123-FOF-WS is denied, for the reasons set forth in the body of this Order. It is further

ORDERED that Citrus and Hernando Counties' request for oral argument on their motion for reconsideration of Order No. PSC-94-1123-FOF-WS is denied, for the reason set forth in the body of this Order. It is further

ORDERED that Citrus and Hernando Counties' motion for reconsideration of Order No. PSC-94-1123-FOF-WS is denied, for the reasons set forth in the body of this Order. It is further

ORDERED that, in the absence of a timely notice of appeal, this docket shall be closed in thirty-two (32) days.

By ORDER of the Florida Public Service Commission, this 11th day of January, 1995.

BLANCA S. BAYÓ, Director
Division of Records and Reporting

by: _____
Chief, Bureau of Records

(S E A L)

RJP

Although Chairman Deason originally dissented on the issue of uniform rates, he concurred with the majority on reconsideration because the Cypress and Oak Villages Association and Citrus and Hernando Counties failed to identify any error or omission of fact or law.

NOTICE OF JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water or wastewater utility by filing a notice of appeal with the Director, Division of Records and Reporting, 101 East Gaines Street, Tallahassee, Florida 32399-0870, and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.