

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, Hernando, Highlands, Hillsborough, Lake, Lee, Marion, Martin, Nassau, Orange, Osceola, Pasco, Polk, Putnam, Seminole, St. Johns, St. Lucie Volusia and Washington Counties.



Docket No. 950495-WS

Filed: September 29, 1995

RESPONSE OF SOUTHERN STATES UTILITIES, INC. IN OPPOSITION TO PUBLIC COUNSEL'S FOURTH MOTION TO DISMISS

SOUTHERN STATES UTILITIES, INC. ("SSU"), by and through its undersigned attorneys, hereby files its Response in opposition to the Office of Public Counsel's ("OPC") Fourth Motion to Dismiss and states as follows:

1. OPC requests that the Commission deny SSU any interim or final rate relief and dismiss this case based on an imminent rate structure change.

2. OPC's request is precipitous in that the Commission's September 12 vote (1) is not final, (2) has not been reduced to writing, (3) is subject to motions for reconsideration and appeal and (4) is subject to stay of implementation pursuant to Commission Rule 25-22.061(1)(a), F.A.C., regarding orders reducing rates and requiring refunds.

3. OPC's motion also flaunts logic since interim rates are collected subject to refund. Therefore, if SSU's 1995 return on equity was to exceed the return last authorized by the Commission,

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a refund would ensue and customers would be made whole. Similarly, final rates will not be established until SSU's 1996 revenue requirements have been determined by the Commission. What SSU's revenues might have been if another rate structure would have been in place in 1995 is irrelevant to the determination of SSU's 1995 or 1996 revenue requirements. In this regard, it must be noted that SSU seeks Commission determination of revenue requirements, not rates nor revenue deficiencies.

4. Commission Staff, as recently as September 27, 1995, confirmed this fact in this docket. In Staff's Recommendation to the Commission on that date, Staff states as follows:

Practical Considerations

The Commission does not approve a greater revenue requirement than requested. There is no such prohibition on the rates approved to generate that revenue requirement or on any component of rate base. Further, the utility does not request "a rate," it requests a revenue requirement sufficient to generate rates which allow it, in the case of interim, to earn the minimum of the range of return on equity.

Staff Recommendation, at page 27.

5. Further, regarding interim rates, the Staff's September 27 recommendation states as follows:

The Legislature was very clear that if the utility makes a prima facie showing that it is entitled to interim rate relief, the Commission shall set a rate for the utility which is sufficient for it [to] earn the minimum of the range of rate of return. The statute does not cap the "rates" to what the utility requested. To do anything other than calculating the rate of return as set forth in the interim statute defeats the intent and purpose of the interim rate authority the

Commission has, and arguably could put the Commission in the position of violating its statutory obligation (if, of course, the utility has shown a prima facie entitlement).

Staff Recommendation, at 27 (emphasis supplied).

6. OPC does not dispute in its Motion the level of 1995 or 1996 revenue requirements for interim or final rate purposes. As indicated in the Staff Recommendation, once SSU establishes a prima facie case for rate relief, the Florida Legislature has mandated that the Commission establish the necessary revenue requirement and a rate which is sufficient to permit SSU to earn the minimum of the range of return. Also, in Staff's words, "[t]he statute does not cap the "rates" to what the utility requested."

7. In light of these facts, whatever rate structure is in place, it is the Commission's duty to insure that SSU has an opportunity to achieve the interim revenue requirement mandated by Section 367.082, Florida Statutes. Commission practice has been to determine SSU's interim revenue requirement and increase rates by an across the board percentage increase necessary to permit that revenue requirement to be achieved. There is no basis stated in OPC's motion for the Commission to deviate from this practice nor its statutory mandate.

8. As the Commission has argued to the First District Court of Appeal, the Commission is required under the Florida Statutes to set rates for a utility, not for individual facilities or systems. See Commission's Answer Brief, at 15, filed in Citrus County, Florida v. Southern States Utilities, Inc., First DCA Case Nos. 93-03324 and 93-04089. Therefore, interim and final rates, under any

rate structure, must permit SSU the opportunity to achieve the revenue requirement and earn the rate of return authorized by statute and the Commission. The fact that a rate structure change may or may not intervene during the course of a proceeding does not relieve the Commission from this duty.

9. OPC suggests that revenue deficiencies cannot be determined under the new rate structure. The suggestion is not accurate as demonstrated below:

(a) 1994 billing data is included in Volume X, Books 1 through 3 (by class and meter size).

(b) 1995 billing data by class and meter size can be derived by using the growth projections provided in Volume V, Book 1 of 1, pages 53 through 68, and applying such projections to the 1994 billing analysis. Additionally, 1995 billing data can also be derived by using the 1996 data discussed below and adjusting the bills and gallons down by the growth projections provided in Volume V, Book 1 of 1.

(c) 1996 billing data by class and meter size can be derived from Volume V, Book 1 of 1, Schedule E-1-2, pages 83 through 93 for conventional treatment; pages 205 through 206 for reverse osmosis treatment and pages 477 through 484 for wastewater treatment.

(d) Volume II, Book 1 also contains summary information for Schedules A and B by service area which provides rate base (including used and useful and all other adjustments) and operating income for each service area previously included in the uniform rate structure for 1994, 1995 and 1996. See pages 41 through 57

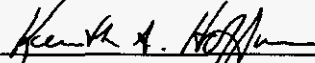
and 123 through 139 of Volume II, Book 1 for rate base and operating income, respectively.

(e) The above information, along with the cost of capital information provided on pages 191 through 193 of Volume II, Book 1 provide sufficient information to determine revenue requirements by service area. Therefore, it is possible for the Commission to calculate interim rates under a "capped" rate structure from the data provided in the minimum filing requirements.¹

10. As with all prior motions to dismiss filed by OPC and joined by other parties to this docket, OPC provides no legal support or precedent, statutory or otherwise, upon which the Commission could justify granting this or any of the previous motions. The reason is obvious -- there is none.

WHEREFORE, for the foregoing reasons, SSU requests that Public Counsel's Fourth Motion to Dismiss be denied.

Respectfully submitted,


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¹The Staff Recommendation dated September 27, 1995 suggests that Staff could not determine "system" specific revenue requirements and, therefore, Staff could not recommend interim rates for SSU. Staff fails to explain why it has deviated from prior Commission orders establishing interim rates for SSU based on SSU's utility-wide revenue requirements and applying the same percentage base facility charge and gallonage charge increase on an across the board basis. See, e.g., Order No. PSC-92-0948-FOF-WS issued September 8, 1992 in Docket No. 920199-WS.

and

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Response of Southern States Utilities, Inc. in Opposition to Public Counsel's Fourth Motion to Dismiss was furnished by U. S. Mail to the following 29th day of September, 1995:

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