

FLORIDA PUBLIC SERVICE COMMISSION

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M E M O R A N D U M

December 7, 1995

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING

FROM: DIVISION OF LEGAL SERVICES (O'SULLIVAN) *ms*
DIVISION OF WATER AND WASTEWATER (WILLIS) *WAS (M)*

RE: UTILITY: SOUTHERN STATES UTILITIES, INC. (ORANGE-OSCEOLA UTILITIES, INC.)
DOCKET NO. ~~950495~~-WS
COUNTY: BRADFORD, BREVARD, CHARLOTTE, CITRUS, CLAY, COLLIER, DUVAL, HIGHLANDS, LAKE, LEE, MARION, MARTIN, NASSAU, ORANGE, OSCEOLA, PASCO, PUTNAM, SEMINOLE, ST. JOHNS, ST. LUCIE, VOLUSIA, AND WASHINGTON

CASE: APPLICATION FOR RATE INCREASE FOR ORANGE-OSCEOLA UTILITIES, INC. IN OSCEOLA COUNTY, AND IN BRADFORD, BREVARD, CHARLOTTE, CITRUS, CLAY, COLLIER, DUVAL, HIGHLANDS, LAKE, LEE, MARION, MARTIN, NASSAU, ORANGE, OSCEOLA, PASCO, PUTNAM, SEMINOLE, ST. JOHNS, ST. LUCIE, VOLUSIA, AND WASHINGTON COUNTIES BY SOUTHERN STATES UTILITIES, INC.

AGENDA: DECEMBER 19, 1995 - REGULAR AGENDA - MOTION FOR RECONSIDERATION ON INTERIM DECISION -- PARTICIPATION IS LIMITED TO COMMISSIONERS AND STAFF

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: I:\PSC\LEG\WP\950495R2.RCM

CASE BACKGROUND

Southern States Utilities, Inc. (SSU or utility) is a Class A utility, which provides water and wastewater service to service areas in 25 counties. On June 28, 1995, SSU filed an application with the Commission requesting increased water and wastewater rates for 141 service areas, pursuant to Section 367.081, Florida

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Statutes. SSU also requested an increase in service availability charges, pursuant to Section 367.101, Florida Statutes. The utility also requested that the Commission approve an allowance for funds used during construction (AFUDC) and an allowance for funds prudently invested.

On July 26, 1995, the Commission issued Order No. PSC-95-0901-PCO-WS that acknowledged the intervention of the Office of the Public Counsel (OPC). The Sugarmill Woods Civic Association, Inc., (Sugarmill Woods) and the Spring Hill Civic Association, Inc., (Spring Hill) were granted intervenor status by Order No. PSC-95-1034-WS, issued August 21, 1995. The Commission granted intervention to the Marco Island Civic Association, Inc., (Marco Island) by Order No. PSC-95-1143-WS, issued September 14, 1995. Sugarmill Woods, Spring Hill, and Marco Island are collectively referred to as "the Associations" in this recommendation.

By Order No. PSC-95-1453-PCO-WS, issued November 28, 1995, the Commission determined that a supplemental notice to SSU's customers was necessary. By Order No. PSC-95-1466-PCO-WS, issued November 28, 1995, several customer service hearings were rescheduled, and by Order No. PSC-95-1506-PCO-WS, issued December 5, 1995, the Commission rescheduled the controlling dates in this proceeding. The technical hearing has now been scheduled for April 29, and May 1-4, 6, 8-11, 1996.

SSU's initial filing included a request for interim rates pursuant to Section 367.082, Florida Statutes. The utility's interim request was based on a projected test year ending December 31, 1995. It requested interim rates which would produce additional revenues of \$7,428,460 for water operations and \$4,920,387 for wastewater operations. The utility agreed to extend the 60 day statutory time period by four days.

On August 30, 1995, OPC filed its Motion to Dismiss SSU's Request for an Interim Increase in Rates and accompanied that motion with a request for oral argument. On October 3, 1995, SSU filed a Suggestion of Error in Staff Recommendation and Request for Approval of Interim Revenue Requirements. The utility also requested oral argument on its suggestion of error.

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By Order No. PSC-95-1327-FOF-WS, issued November 1, 1995, the Commission suspended the utility's proposed final rates, pursuant to Section 367.081(6), Florida Statutes. The Commission further denied the utility's request for interim rates, but acknowledged that the utility may file another petition for interim relief due to the unique circumstances of this case. By that same order, the Commission denied OPC's motion to dismiss the utility's request for interim rates and OPC's request for oral argument. The Commission also denied consideration of SSU's suggestion of error and request for oral argument. On November 13, 1995, SSU filed a supplemental petition for interim rate relief. The Commission is scheduled to consider this filing on January 4, 1996.

On November 2, 1995, OPC filed a Motion for Reconsideration of Order No. PSC-95-1327-FOF-WS, requesting that the Commission reconsider its determination that a utility may use a forecasted income statement. OPC filed a motion for oral argument with its motion. On that same date the Associations filed a Motion for Reconsideration of Order No. PSC-95-1327-FOF-WS requesting that the Commission reconsider and reverse its decision to permit SSU to file another petition for interim rates. The Associations did not file a request for oral argument. SSU filed a timely response to the motions on November 9, 1995.

This recommendation addresses the motions for reconsideration filed by OPC and the Associations, and OPC's request for oral argument.

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission allow oral argument on OPC's Motion for Reconsideration of Order No. PSC-95-1327-PCO-WS?

RECOMMENDATION: No. While OPC does state why it believes oral argument would assist the Commission in its determination, because its motion for reconsideration addresses an interim decision, oral argument should be denied. (O'SULLIVAN)

STAFF ANALYSIS: OPC's November 2, 1995, motion for reconsideration was accompanied by a request for oral argument. Rule 25-22.058(1), Florida Administrative Code, requires a request for oral argument to accompany the pleading and to "...state with particularity why oral argument would aid the Commission in comprehending and evaluating the issues before it." OPC states that oral argument is "necessary to explain the interrelationship of the interim statutes affecting different industries" and "explain how the commission has misinterpreted a term associated with balance sheets." In its November 9, 1995, response, SSU opposes OPC's request for oral argument. The utility contends that OPC has no standing to participate in an interim decision, its request merely repeats the arguments made in its motions, and that its request for oral argument indicates that OPC will present further materials which have not been included in its written motion.

Before considering the substance of OPC's motion, Staff believes it must first consider whether oral argument is appropriate on an item regarding an interim rate decision. The Commission's procedural rules preclude parties from participating in discussions regarding interim rates. Rule 25-22.0021(1), Florida Administrative Code, states in pertinent part that persons who may be affected by an item on an agenda may address the Commission, with the exception of actions on interim rates in file and suspend rate cases. When the Commission considered SSU's interim rate request at its October 6, 1995, Special Agenda Conference, party participation was not permitted on the substantive decision. Also, the Commission denied OPC's request for oral argument on its motion to dismiss SSU's interim request. Staff believes that the same rationale expressed in Order No. PSC-95-1327-FOF-WS also applies in this instance.

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Because the underlying decision concerned interim rates in which participation is limited to the Commission and Staff, Staff recommends that the Commission deny OPC's request for oral argument on its motion for reconsideration of the interim decision. Furthermore, staff believes that the Commission has adequate information from the pleadings in order to make its decision.

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ISSUE 2: Should OPC's Motion for Reconsideration of Order No. PSC-95-1327-PCO-WS, be granted?

RECOMMENDATION: No. OPC's motion for reconsideration should be denied. (O'SULLIVAN, WILLIS)

STAFF ANALYSIS: 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 as set out in Diamond Cab Co. of Miami v. King, 146 So. 2d 889 (Fla. 1962). In that case, 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 some 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 re-arguing 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, 317 (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 OPC's motion.

In its August 30, 1995, Motion to Dismiss SSU's Request for an Interim Increase in Rates, OPC requested that the Commission deny SSU's interim rate request because the utility based its request on a budgeted interim test year. OPC contended that while Section 367.082, Florida Statutes, allows a projected test year rate base, it does not allow the use of projected revenues and expenses.

Order No. PSC-95-1327-FOF-WS, issued November 1, 1995, denied OPC's motion to dismiss. Section 367.082 establishes a prima facie entitlement for interim rates, and the Commission's procedures do not contemplate a party responding to an interim rate request. Therefore, while the Commission denied SSU's interim rate request, it also denied OPC's motion to dismiss as being inappropriate.

On November 2, 1995, OPC timely filed its Motion for Reconsideration of Order No. PSC-95-1327-FOF-WS. OPC contends that while that order denied SSU's interim rate request, it "still established the principle that a...utility may file a request for

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interim rates using a forecasted income statement.¹ OPC contends that the Commission's order does not recognize the difference between a forecasted rate base and a forecasted income statement. It believes that the order permits the use of a projected income statement in order to determine the difference between achieved and required rate of return. OPC states that Order No. PSC-95-1327-FOF-WS "sets a precedent for all water and wastewater utilities that allows the use of a forecasted income statement for interim rate relief." Therefore, OPC requests that the Commission "correct this error" before it is relied upon by other utilities.

In its timely response, SSU first argues that OPC does not have standing to participate in interim rate decisions. SSU also argues that OPC has not met the test for reconsideration as set forth in Diamond Cab. Further, it contends that OPC has misinterpreted Section 367.082, and has not provided any citation to support its assertions. SSU points out that Order No. PSC-95-1327-FOF-WS agrees with the arguments OPC has made in its motion to dismiss.

SSU cites the portion of Order No. PSC-95-1327-FOF-WS which denied OPC's motion to dismiss as inappropriate: "Section 367.082, Florida Statutes, and our procedures do not contemplate parties filing a response or motion regarding a utility's request for interim rates." (page 7). Staff believes that that determination is controlling in this instance. While the Commission did not deny OPC's motion to dismiss on standing grounds, it found a motion filed in response to a petition for interim rates to be inappropriate. For the same reasons as those enunciated in Order No. PSC-95-1327-FOF-WS, a motion for reconsideration of an interim decision filed by a party should also be denied. Therefore, Staff recommends that the Commission deny OPC's motion for reconsideration.

Even if the Commission were to consider OPC's motion for reconsideration, Staff recommends that OPC's motion should be denied. OPC has not demonstrated that the Commission has made a

¹OPC's motion refers to a "forecasted" income statement and rate base. Section 367.082(1), Florida Statutes, refers to a "projected" rate base, and that term will be used in this recommendation.

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mistake of law in its decision. OPC's motion is founded upon the mistaken premise that the Commission determined in Order No. PSC-95-1327-FOF-WS, that interim rates could be achieved by using a projected rate base, and a projected test year. OPC's motion does not cite any specific portion of the order. Staff believes that the order does not reach the decision that OPC claims in its motion. Order No. PSC-95-1327-FOF-WS, states, in relevant part:

SSU's request for a projected test year causes us to consider whether the statute permits the use of a fully projected interim test year, or whether it is appropriate to consider only a projected test year rate base, what types of projections are allowed, and whether projections should only reflect non-controllable items. (page 4)

Section 367.082(1) states that we may use a "projected test year rate base" to determine interim rates (emphasis added). However, the use of a projected rate base only, without corresponding projections in areas such as capital structure, expenses and billing would result in a mismatch of rate base component in the test year. We are concerned that to broaden a projected test year to include more than the rate base would exceed the clear meaning of Section 367.082(1). (page 5)

OPC is concerned that by permitting its decision to stand, the Commission will send the message to other utilities that a projected test year is appropriate. This concern is unfounded, because Order No. PSC-95-1327-FOF-WS does not make any findings as to the interpretation of Section 367.082(1) with regard to projected interim test years. As the excerpts above indicate, the Commission noted the same concerns expressed by OPC, that to broaden a projected test year to include more than a projected rate base would go beyond the language and meaning of Section 367.082(1). The Commission did not, as OPC contends in its motion,

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make a determination that a utility may file a request for interim rates based upon a projected income statement. The order only expresses concern over the statutory language and directs the utility to consider those findings when refiling its petition.

Staff believes that OPC has not shown that the Commission made a mistake of law, as required by Diamond Cab. Accordingly, Staff recommends that OPC's motion for reconsideration should be denied.

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ISSUE 3: Should the Associations' Motion for Reconsideration of the Order No. PSC-95-1327-PCO-WS, be granted?

RECOMMENDATION: No. The Associations' motion for reconsideration should be denied. (O'SULLIVAN, WILLIS)

STAFF ANALYSIS: On November 2, 1995, the Associations timely filed their motion for reconsideration. The Associations state that while they support the Commission's denial of the utility's request for interim rates, they seek reconsideration of the Commission's determination that the utility may file another petition for interim rates. The Associations contend that because SSU did not request alternate interim rate relief in addition to its request for interim uniform rates, it should not be permitted to file another interim petition. The Associations point out that Staff time should not be spent on another interim request. They argue that the utility relied "solely on an illogical and untested statutory interim rate methodology," and should not be allowed "another bite of the apple."

In its response, filed on November 9, 1995, SSU states that because Order No. PSC-95-1327-FOF-WS found that parties may not file responses to interim petitions, the Associations do not have standing to participate interim rate determinations, and therefore do not have standing to file a motion for reconsideration. SSU also contends that the Associations have made no attempt to demonstrate that the Commission made any mistake of law or fact. SSU argues that the Associations' motion merely raises reargument and does not demonstrate any error.

Staff has applied the standards of Rule 25-22.060(1), Florida Administrative Code, and the standards of the decisions discussed in Issue 2 to the Associations' motion for reconsideration. As stated in Issue 2, Staff recommends that the Associations' motion for reconsideration should be denied because the Commission has found a motion filed in response to a petition for interim rates to be inappropriate. Even if the Commission were to consider the substance of the motion, Staff recommends that the Commission deny the Associations' motion. The motion does not allege that the Commission made a mistake of law or fact in its decision. The motion argues that SSU should not be permitted to file another

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petition for interim rates, but does not demonstrate any grounds upon which the Commission should reconsider its decision. The motion is merely reargument of a decision already made, and as such, should be denied.

Staff also notes that the Commission addressed the issue of whether SSU could refile an interim rate request at great length during its Agenda Conference. The Commission considered many of the issues raised in the Association's motion for reconsideration, including whether Section 367.082 permits another interim filing. Order No. PSC-95-1327-FOF-WS states at page 5 that "we recognize that the circumstances in this docket are unusual, particularly the timing of the decision in Docket No. 920199-WS and the untested nature of a projected interim test year." In making its decision, the Commission reviewed the Commission's Standard Operating Procedures, the legislative history of Section 367.082, case law, and past decisions regarding the refiling of interim rate requests, including Docket No. 820007-EU involving Tampa Electric Company.

For the reasons set forth above, Staff recommends that the Commission deny the Associations' motion for reconsideration of Order No. PSC-95-1327-FOF-WS.