BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: 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)	DOCKET NO. 920199-WS ORDER NO. PSC-96-1311-FOF-WS ISSUED: October 28, 1996

The following Commissioners participated in the disposition of this matter:

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

ORDER GRANTING STAY OF ORDER NO. PSC-96-1046-FOF-WS AND REQUIRING APPROPRIATE SECURITY

BY THE COMMISSION:

BACKGROUND

On May 11, 1992, Southern States Utilities, Inc., (SSU or utility) filed an application to increase the rates and charges for 127 of its water and wastewater service areas. By Order No. PSC-93-0423-FOF-WS, issued March 22, 1993, we approved an increase in the utility's final rates and charges, basing the rates on a uniform rate structure. Citrus County and Cypress and Oak Villages (COVA), now known as Sugarmill Woods Civic Association (Sugarmill Woods) and the Office of Public Counsel (OPC) filed notices of appeal of Order No. PSC-93-0423-FOF-WS with the First District Court of Appeal. On October 19, 1993, the utility filed a Motion to vacate automatic stay, which we granted by Order No. PSC-93-1788-FOF-WS, issued December 14, 1993.

On April 6, 1995, our decision in 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 Utilities, Inc., 656 So. 2d 1307 (Fla. 1st DCA 1995). On October 19, 1995, we issued Order No. PSC-95-1292-FOF-WS, which required SSU to implement a modified stand alone rate structure and to refund accordingly. On November 3, 1995, SSU filed a motion for reconsideration of Order No. PSC-95-1292-FOF-WS, which we denied at the February 20, 1996, Agenda Conference.

On February 29, 1996, prior to the issuance of an order memorializing our decision, 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, we determined, on our own motion, to reconsider the impact of the GTE ruling upon our entire decision on remand.

By Order No. PSC-96-1046-FOF-WS, issued August 14, 1996, we affirmed our earlier determination that SSU must make refunds to customers, but could not implement a surcharge to those customers who paid less under the uniform rate structure. We ordered the utility to make refunds 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. The refunds were to be made within 90 days of the issuance of the order.

STAY OF ORDER NO. PSC-96-1046-FOF-WS

On September 3, 1996, SSU filed notification that it had appealed Order No. PSC-96-1046-FOF-WS to the First District Court of Appeal. On that same date, SSU filed a motion for Stay of Order No. PSC-96-1046-FOF-WS. In its motion, SSU contended that Rule 25-22.061(1) requires this Commission to grant a stay. The utility asserted that the language is mandatory and therefore provides no discretion to deny a stay. SSU estimated that the refund would total approximately $10 million dollars.

In their September 13, 1996, joint response, Sugarmill Woods and Citrus County contended that basic fairness requires that Order No. PSC-96-1046-FOF-WS should go into effect pending the appeal. Sugarmill Woods and Citrus County asserted that some customers may never enjoy the benefits of the refund if it is delayed further, and that if SSU prevails on appeal, the utility could implement a surcharge to collect the excess refunds.

Rule 25-22.061(1)(a), Florida Administrative Code, provides that:

> When the order being appealed involves the refund of moneys to customers or a decrease in rates charges to customers, the Commission shall, upon motion filed by the utility or company affected, grant a stay pending judicial proceedings. The stay shall be conditioned upon the posting of good and sufficient bond, or the posting of a corporate undertaking, and such other conditions as the Commission finds appropriate.

This rule is mandatory in that we must impose a stay upon request, if the order in question involves a refund and upon posting of a sufficient bond. Sugarmill Woods and Citrus County contended that fairness dictates that because SSU requested and benefitted from the lifting of the stay and the implementation of the final order's rates on the first appeal, the ratepayers should in turn receive the benefit of the implementation of Order No. PSC-96-1046-FOF-WS, which requires refunds to be made. We observe that upon the first appeal, SSU requested and received a lifting of the stay imposed by the appeal by a governmental body, pursuant to Rule 25-22.061(3)(a), Florida Administrative Code. That rule is also mandatory in nature, in that it requires a lifting of the stay as long as appropriate security is provided.

Order No. PSC-96-1046-FOF-WS clearly requires SSU to make a refund. Therefore, pursuant to Rule 25-22.061(1)(a), we hereby impose a stay upon Order No. PSC-96-1046-FOF-WS, pending the resolution of the judicial proceedings.

SECURITY

Pursuant to Rule 25-30.061(1)(a), Florida Administrative Code, a stay pending appeal must be conditioned upon the posting of good and sufficient bond, or the posting of a corporate undertaking, and any such other conditions we deem appropriate.

SSU indicated in its motion that it was prepared to post the specific security required by this Commission. However, in order to be spared the expense of posting a bond, SSU requested that it be allowed to post a corporate undertaking. On September 11, 1996, SSU filed financial statements in support of its request to post a corporate undertaking. Sugarmill Woods and Citrus County argued that in the event a stay is imposed, a bond, rather than a corporate undertaking should be required because SSU's financial statements do not demonstrate that SSU has sufficient shareholder equity in excess of liabilities, or sufficient cash on hand to make the required refund.

SSU indicated that the potential refund amounts to approximately $10 million. Our calculations indicate that the refund based upon 1991 consumption could range as high as $2,359,639 for water and $1,352,970 for wastewater. This estimate is for a one year period and does not include interest. Because uniform rates were collected over a two year period, the total amount of refund could be as high as $10 million including interest, as estimated by SSU.

A review of the utility's financial statements indicates that the utility cannot support a corporate undertaking for this amount. The criteria for a corporate undertaking include sufficient liquidity, ownership equity, profitability, and interest coverage to guarantee any potential refund. SSU has adequate ownership equity and positive liquidity. However, SSU has marginal interest coverage and minimal profitability. For example, after removing the one-time gain on disposal of assets in 1994, the annual average net income over the last three years is negative. In addition, the average annual amount of net working capital over the last three years is only half of the amount of the potential liability.

On December 14, 1995, SSU filed a surety rider which extended the duration and the amount of the bond previously posted for the first appeal in this docket. This rider increased the amount of the original bond to $8,000,000. Therefore, SSU shall obtain an additional bond or again increase the original bond sufficient to cover the potential refund. The bond must state that it will remain in effect during the pendency of the appeal and will be released or terminated upon subsequent order of this Commission addressing the potential refund. Finally the bond shall refer to all monies collected pursuant to the original orders on appeal, as well as Order No. PSC-96-1046-FOF-WS.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the motion to grant a stay of Order No. PSC-96-1046-FOF-WS, filed by Southern States Utilities, Inc., is hereby granted. It is further

ORDERED that Southern States Utilities, Inc. shall maintain security pursuant to the provisions of this Order during the pendency of the appeal of Order No. PSC-96-1046-FOF-WS.

By ORDER of the Florida Public Service Commission, this 28th day of October, 1996.

BLANCA S. BAYÓ, Director
Division of Records and Reporting

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NOTICE OF FURTHER PROCEEDINGS OR 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 order, which is preliminary, procedural or intermediate in nature, may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the First District Court of Appeal pursuant to Rule 9.310(f), Florida Rules of Appellate Procedure.