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, Highlands, Lake, Lee, Marion, Martin, Nassau, Orange, Osceola, Pasco, Polk, Putnam, Seminole, St. Johns, St. Lucie, Volusia and Washington Counties.	Docket No. 950495-WS Filed: November 26, 1996

SOUTHERN STATES UTILITIES, INC.'S CROSS-MOTION FOR RECONSIDERATION OF ORDER NO. PSC-96-1320-FOF-WS

Southern States Utilities, Inc. ("SSU"), by and through its undersigned counsel, and pursuant to Rule 25-22.060(1)(b), Florida Administrative Code, hereby files its Cross-Motion for Reconsideration of Order No. PSC-96-1320-FOF-WS ("Final Order"). SSU's Cross-Motion for Reconsideration challenges that portion of the Final Order which reduced SSU's common equity by $4.8 million purportedly based on the refund orders issued in Docket No. 920199-WS. In support of this Cross-Motion for Reconsideration, SSU states as follows:

see cover letter
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I. BACKGROUND

1. On October 30, 1996, the Commission issued its Final Order. On November 1, 1996, SSU filed a Notice of Appeal of the Final Order with the Commission and the First District Court of Appeal. On November 14, 1996, Intervenors Citrus County Board of County Commissioners, et al., filed a Motion for Reconsideration of the Final Order with the Commission and a Motion to Relinquish

Jurisdiction to the Commission for Purposes of Considering Motions for Reconsideration with the First District Court of Appeal. On November 20, 1996, SSU filed a Response to the Motion to Relinquish Jurisdiction concurring in the relief requested or, alternatively, in an abatement of the appeal, pending disposition of motions for reconsideration by the Commission.

2. In light of SSU's concurrence with the Motion to Relinquish Jurisdiction and the governing law which supports the granting of the motion, SSU anticipates that the First District Court of Appeal will issue an order relinquishing jurisdiction or abating SSU's Notice of Appeal pending disposition of motions for reconsideration. Accordingly, SSU files this Cross-Motion for Reconsideration under the premise that the Commission will have jurisdiction to address the issues raised herein on reconsideration.

II. REDUCTION OF COMMON EQUITY BY $4.8 MILLION

3. As a result of the Court's reversal of the Commission imposed uniform rate structure in Citrus County v. Southern States Utilities, Inc., 656 So.2d 1307 (Fla. 1st DCA 1995), remand proceedings ensued before the Commission to determine, inter alia, whether SSU would be required to make refunds to customers whose rates were higher under the uniform rate structure in effect during the appeal than the resulting rates under SSU's originally proposed modified stand-alone rate structure approved on remand.

4. On October 19, 1995, the Commission issued Order No. PSC-95-1292-FOF-WS in Docket No. 920199-WS (the "October 19, 1995

order")[1] requiring SSU to make such refunds totalling approximately $8.2 million including interest. The refunds were ordered without permitting offsetting surcharges to customers whose rates were lower under the uniform rate structure in effect during the pendency of the appeal thereby substantially impairing the total revenue requirements approved by the Commission and affirmed by the Court in the Citrus County decision.

5. On November 3, 1995, SSU filed a Motion for Reconsideration of the October 19, 1995 order requesting the Commission, inter alia, to rescind any refund requirement or, alternatively, to adopt the prospective refund and correlative surcharge mechanism proposed by SSU.

6. On February 20, 1996, at a regular agenda conference, the Commission voted to deny the above-described portions of SSU's Motion for Reconsideration. However, on February 29, 1996, the Supreme Court of Florida issued its opinion in GTE Florida, Inc. v. Clark, 668 So.2d 971 (Fla. 1996). On March 21, 1996, the Commission issued Order No. PSC-96-0406-FOF-WS in Docket No. 920199-WS (the "March 21, 1996 order"), finding that the GTE Florida decision "may have an impact on our decision in this case" and determining, on its own motion, that it should reconsider

> whether reopening the record in Docket No. 920199-WS is appropriate, whether refunds are appropriate, and whether a surcharge as set

[1]In Re: Application for rate increase by SOUTHERN STATES UTILITIES, INC., et al., 95 F.P.S.C. 10:371 (1995).

forth in the GTE decision is appropriate.[2]

Parties were granted the opportunity to file briefs addressing these issues.

7. On August 14, 1996, the Commission issued Order No. PSC-96-1046-FOF-WS in Docket No. 920199-WS (the "August 14, 1996 order")[3] finding that the GTE Florida decision was distinguishable from the facts purporting to support a refund requirement in Docket No. 920199-WS and holding that SSU should make refunds to the customers whose rates were higher under the uniform rate structure in effect during the Citrus County appeal without offsetting surcharges to customers whose rates were lower under the uniform rate structure in effect during the same appeal.

8. On September 3, 1996, SSU filed a Notice of Appeal of the August 14, 1996 order. On September 3, 1996, SSU filed a motion for stay of the August 14, 1996 order pending disposition of its appeal. SSU's motion for stay was granted by Order No. PSC-96-1311-FOF-WS issued October 28, 1996 in Docket No. 920199-WS.[4]

9. In the instant case, the Commission determined that SSU's common equity should be reduced by $4.8 million based on the $8.2

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[2]In Re: Application for rate increase by SOUTHERN STATES UTILITIES, INC., et al., 96 F.P.S.C. 3:324, 325-326 (1996).

[3]In Re: Application for rate increase by SOUTHERN STATES UTILITIES, INC., et al., 96 F.P.S.C 8:198 (1996).

[4]On November 12, 1996, the Office of Public Counsel ("OPC") filed a motion for reconsideration and clarification or, in the alternative, motion to modify stay. OPC's motion does not challenge the stay of the refund requirement pending disposition of SSU's appeal.

million refund ordered by the Commission in Docket No. 920199-WS.[5] The Commission's decision has no basis in the record and constitutes a mistake of both fact and law.

10. The only evidence in the record purporting to support the adjustment was provided by Ms. Dismukes on behalf of the Office of Public Counsel. Ms. Dismukes' proposed adjustment was based solely on the refund ordered by the Commission pursuant to the October 19, 1995 order (Tr. 2741). However, by the time this case went to hearing, the October 19, 1995 order had been withdrawn by the March 21, 1996 order reflecting the Commission's decision to reconsider the refund issue on its own motion.

11. The Commission's withdrawal of the October 19, 1995 order was confirmed by the subsequent actions of the parties and the Commission itself.

a. First, counsel for affected parties agreed at the June 11, 1996 oral argument that the March 21, 1996 order reflected the Commission's decision to review the refund issue on a "clean slate." SSU's counsel characterized it as a "de novo" review. Counsel for two customer groups (City of Keystone Heights and Marion Oaks Civic Association) who petitioned to intervene stated:

> ... your decision to reconsider the refund order on your own motion essentially is a new deal .... [I]n a very real sense, you're starting over and it's appropriate to use your discretion to allow affected parties the opportunity to intervene.[6]

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[5]Final Order, at 115.

[6]Transcript from June 11, 1996 Agenda Conference in Docket No. 920199-WS, at 6-8, copy attached hereto as Exhibit A.

b. Second, a review of the August 14, 1996 order confirms that the refund issue was not evaluated by the Commission pursuant to the March 21, 1996 order under the limited standard of review for reconsideration. Further, the August 14, 1996 order recites all of the prior determinations of the Commission reflected in the October 19, 1995 order which were not placed at issue anew by the March 21, 1996 order.[7] If any portion of the October 19, 1995 order had remained in effect following the issuance of the March 21, 1996 order, there would have been no need for the Commission to again set forth its determinations on all issues in the August 14, 1996 order. Indeed, SSU is not aware of any prior Commission order addressing a motion for reconsideration (by a party or by the Commission) of a pending order which reaffirmed and reincorporated the remaining prior determinations not placed at issue in the motion for reconsideration.

12. The above facts confirm that the only basis in the record for the $4.8 million adjustment -- i.e., the October 19, 1995 order -- was of no legal force and effect at the time of the hearing. There was no October 19th order outstanding and no witness needs to state such fact under oath to confirm this reality.

13. The Commission's October 30th order appears to attempt to cure the lack of a record basis for its decision by referring to the August 14, 1996 order in support of the adjustment.[8] The August 14, 1996 order is not part of the record. No party could

[7]96 F.P.S.C. 8:198 at 208-209 (1996).

[8]Final Order, at 115.

have known during the hearings in this case what the Commission would do in Docket No. 920199-WS. Nor did any party move to supplement the record or seek official recognition of the August 14, 1996 order following the conclusion of the hearing.

14. If the Commission determines, sua sponte, that it is appropriate to take official recognition of the August 14, 1996 order, then the Commission also must take official recognition of Order No. PSC-96-1311-FOF-WS issued October 28, 1996 granting SSU's Motion for Stay of the August 14, 1996 order. That is, if the Commission believes it is appropriate to go outside of the record to recognize subsequent decisions issued in Docket No. 920199-WS affecting this issue, it should recognize all such decisions. Here, the stay of the refund requirement pending the appeal of same confirms that SSU's 1996 test year should not reflect any adjustment for refunds. It is an adjustment which defies reality in light of the stay and acts as an unlawful predetermination of the merits of SSU's appeal of the refund order.

15. In conclusion, the $4.8 million adjustment to SSU's common equity has no basis in the record. The Commission's reliance upon the October 19, 1995 order in support of the adjustment is a mistake of fact and law. Further, the stay of the August 14, 1996 order confirms the fact that SSU's 1996 test year is not impacted by the appealed refund requirement.

WHEREFORE, SSU respectfully requests that the Commission enter an order granting this motion for cross-reconsideration and rescind the $4.8 million reduction to common equity.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of Southern States Utilities, Inc.'s Cross-Motion for Reconsideration of Order No. PSC-96-1320-FOF-WS was furnished by U. S. Mail to the following on this 26th day of November, 1996:

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1995/cross.motion

EXHIBIT "A"

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION
TALLAHASSEE, FLORIDA

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

BEFORE:	CHAIRMAN SUSAN F. CLARK COMMISSIONER J. TERRY DEASON COMMISSIONER JULIA L. JOHNSON COMMISSIONER DIANE K. KIESLING COMMISSIONER JOE GARCIA
PROCEEDING:	AGENDA CONFERENCE
ITEM NUMBER:	37
DATE:	Tuesday, June 11, 1996
PLACE:	4075 Esplanade Way, Room 148 Tallahassee, Florida
REPORTED BY:	JANE FAUROT, RPR Notary Public in and for the State of Florida at Large

JANE FAUROT, RPR
P.O. BOX 10751
TALLAHASSEE, FLORIDA 32302
(904) 379-8669

COMMISSIONER DEASON: Yes.

CHAIRMAN CLARK: Correct.

COMMISSIONER JOHNSON: I can second that.

CHAIRMAN CLARK: There is a motion and a second on the recommendation that the oral argument be denied. So the effect of the motion is that oral argument on the petition to intervene be granted. All those in favor say aye.

COMMISSIONER GARCIA: Aye.

COMMISSIONER DEASON: Aye.

COMMISSIONER JOHNSON: Aye.

CHAIRMAN CLARK: Opposed, nay.

COMMISSIONER KIESLING: Nay.

CHAIRMAN CLARK: Nay.

The petition to have oral argument is granted. I would indicate -- Commissioners, is there a preference as to time? I would think five minutes ought to do it.

COMMISSIONER DEASON: I think five minutes would be a maximum and it should be shorter than that.

MR. McGLOTHLIN: It's my motion and that will be ample, Commissioners.

CHAIRMAN CLARK: Go ahead, Mr. McGlothlin.

MR. McGLOTHLIN: Commissioners, my name is Joe McGlothlin. I represent the Marion Oaks Civic Association and the City of Keystone Heights, both of

whom are represented by me here today.

Commissioners, obviously the Commission has the discretion to waive its five-day rule governing the time of interventions. The Commission did so recently, and it did so to allow these same parties the ability to intervene as full parties in SSU's pending rate case. It did so in recognition of the efforts that the Office of Public Counsel had made to ensure that all different customer perspectives were adequately represented in that case. You have the discretion. I'm going to give you three reasons why you should use that discretion and grant our petition to intervene in this proceeding.

First of all, the same consideration that led you to grant our petition to intervene in the rate case is present here. We have filed a petition to intervene in furtherance of the same initiative of Public Counsel to ensure that all customer perspectives are represented. Following the issuance of the GTE decision, the Office of Public Counsel recognized that it could not zealously represent the customer views on the issues raised by your decision to reconsider your refund order on your own motion. For that reason, you should allow the parties full party status so that their rights can be protected.

Secondly, the second reason you should use your discretions is because the GTE decision and your decision to reconsider the refund order on your own motion essentially is a new deal. As a matter of fact, in response to a letter I wrote on procedural points, SSU referred to the Commission's de novo review of certain decisions in this case. And in a very real sense, you're starting over and it's appropriate to use your discretion to allow affected parties the opportunity to intervene.

Thirdly, in your decision you recognized that the impact of the GTE decision on the outcome of this case raises very important, very significant issues. I think the fact that you invited parties to submit briefs on the question indicates that the Commission wants to be fully informed and apprised of all arguments and all points of view. It's appropriate then that you allow intervention to accomplish that end.

And in that vein, I'd like to point out that while in its recommendation the staff recommends that you rigidly apply the intervention rule, it also indicates that on remand the usual procedure is to deny parties participation in the agenda conference. Staff recognizes that these issues are significant and for