



(OPC). On October 18, 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, Order No. PSC-95-1292-FOF-WS was issued, Order Complying with Mandate, Requiring Refund, and Disposing of Joint Petition. By that Order, SSU was ordered to implement a modified stand-alone rate structure, develop rates based on a water benchmark of \$52.00 and a wastewater benchmark of \$65.00, and to refund accordingly. On November 3, 1995, SSU filed a Motion for Reconsideration of Order No. PSC-95-1292-FOF-WS. At the February 20, 1996, Agenda Conference, we voted, inter alia, to deny SSU's motion for reconsideration.

On February 29, 1996, subsequent to our vote on the utility's motion for reconsideration but prior to the issuance of the order memorializing the vote, 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, after finding that the GTE decision may have an impact on the decision in this case, on our own motion we voted to reconsider Order No. PSC-95-1292-FOF-WS.

By Order No. PSC-96-1046-FOF-WS, issued August 14, 1996, we affirmed our earlier decision to require SSU to implement the modified stand-alone rate structure and to make refunds to customers. However, we found that SSU could not collect a surcharge from those customers who paid less under the uniform rate structure. The utility was ordered 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.

On September 3, 1996, SSU notified the Commission 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. By Order No. PSC-96-1311-FOF-WS, issued October 28, 1996, SSU's motion for stay was granted. On November 12, 1996, OPC filed a Motion for Reconsideration and Clarification or, in the Alternative, Motion to Modify Stay. On November 18, 1996, SSU timely filed its response to OPC's motion. This Order addresses the motions filed by OPC.

OPC's Motion for Reconsideration and Clarification or, in the  
Alternative Motion to Modify Stay

In its motion, OPC requests that the Commission "reconsider and clarify" that the stay of Order No. PSC-96-1046-FOF-WS applies only to SSU's refund obligation and not to the rates charged by SSU in the Spring Hill service area. Alternatively, OPC requests that the Commission modify the stay so that it only applies to the refund obligation. It is OPC's position that the Spring Hill customers should have the modified stand-alone rates. In response to OPC's motion, SSU asserts that because OPC failed to file a response to SSU's motion for stay, it cannot now raise new arguments concerning the motion for stay in a motion for reconsideration, and that because the Order on Stay relied upon Rule 25-22.061(1)(a) in full, the entire final order was stayed.

The Citrus County decision stated that uniform rates could not lawfully be approved without a finding that SSU's facilities and land were functionally related. We chose not to reopen the record to take evidence on that issue. Accordingly, another rate structure had to be implemented for those SSU facilities. Upon reviewing the evidence, we found that the modified stand-alone rate structure was supported by the record in this docket. By Order No. PSC-95-1292-FOF-WS (and later affirmed in Order No. PSC-96-1046-FOF-WS), we required SSU to implement the modified stand-alone rate structure for all of the 127 facilities in Docket No. 920199-WS. Our decision on remand clearly includes the Spring Hill facility.

As stated earlier, SSU implemented the modified stand-alone rate structure for the facilities that were included in the recent rate case, Docket No. 950495-WS. The Spring Hill facility was not included in that filing. See, Order No. PSC-95-1385-FOF-WS, issued November 7, 1995. As a result, the customers of the Spring Hill facility continue to have the uniform rate structure. However, for the facilities that were part of the most recent rate proceeding, modified stand-alone rates were implemented when the interim rates were approved.

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

When the order being appealed involves the refund of moneys to customers or a decrease in rates charged 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.

In granting SSU's request for a stay, we relied upon Rule 25-22.061(1)(a), Florida Administrative Code. It has been our intent, however, to require the implementation of the modified stand-alone rates for all of the facilities in Docket No. 920199-WS. Consistent with our intent, we find it appropriate to modify our order on stay. We find that Rule 9.310(a), Florida Rules of Appellate Procedure, provides us with sufficient authority to modify the order on stay. Rule 9.310(a), Florida Rules of Appellate Procedure, provides in pertinent part that "a party seeking to stay a final or non-final order pending review shall file a motion in the lower tribunal, which shall have continuing jurisdiction, in its discretion, to grant, modify or deny such relief." In consideration of the foregoing, OPC's alternative motion to modify stay is granted. Order No. PSC-96-1046-FOF-WS is herein modified to reflect that only SSU's refund obligation is stayed pending appeal. SSU shall implement the modified stand-alone rate structure for the Spring Hill customers consistent with Orders Nos. PSC-95-1292-FOF-WS and PSC-96-1046-FOF-WS. Accordingly, OPC's motion for reconsideration is denied.

#### Appeal Bond

Pursuant to Rule 25-22.061(1)(a), Florida Administrative Code, a stay should 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. Further, pursuant to Rule 9.310(c), we have continuing jurisdiction to determine the appropriate bond amount. As stated earlier, Order No. PSC-96-1311-FOF-WS granted SSU's motion for stay of Order No. PSC-96-1046-FOF-WS and required additional security. On December 2, 1996, SSU filed a Surety Rider which increased its appeal bond from \$8 million to \$10 million.

Our original calculations containing an estimate of the potential refund were incorrect. The original calculations contained an estimate based upon 1991 consumption for a one-year period and did not include interest but did include the potential refunds to Spring Hill. The uniform rates, however, were collected over a two year period. We incorrectly assumed that all potential refund liabilities ended with the implementation of the interim rates in Docket No. 950495-WS. These interim rates were based upon

the modified stand-alone rates approved by us. As mentioned earlier, the Spring Hill facility was not included in that docket and SSU has not implemented the modified stand-alone rates for the Spring Hill customers.

In Order No. PSC-96-1311-FOF-WS, the original estimated total amount of refund was \$10,000,000, including interest. In its motion filed September 3, 1996 SSU also indicated that the potential refund amounts to approximately \$10 million. Upon further review, we have determined that additional security is required. Due to the fact that SSU has not implemented the modified stand-alone rates in its Spring Hill service area, the potential refund liability continues to accrue. SSU began collecting the uniform rates in the Spring Hill service area in September 1993. For purposes of calculating the amounts set forth below, we assume the rates will be implemented in March, 1997.

We have recalculated the potential refund amount. We have determined that the total liability could be as high as \$13,848,225, including interest. Assuming a time frame of a two-year appeal, this amounts to a potential refund to Spring Hill of \$7,357,646, without interest. When interest is included, this amount increases to \$7,964,100 over this time period. As to the remaining service areas, the uniform rates were collected from September 1993 to January 1996. The total amount of potential refunds for these areas amounts to \$4,928,726, without interest. Again assuming a two-year appeal time period, the amount increases to \$5,485,275 including interest. These calculations are shown on Schedule No. 1 attached to this Order and incorporated herein by reference.

Therefore, we find it appropriate to require SSU to again increase the original bond to the amount of \$13,848,225 which should be sufficient to cover the total potential refund. Further, the bond shall state that it will remain in effect during the pendency of the appeal and will be released or terminated upon subsequent order of the Commission addressing the potential refund.

Order No. PSC-96-1046-FOF-WS has been appealed. Accordingly, this docket shall remain open pending final resolution of the appeal by the First District Court of Appeal.

Based on the foregoing, it is

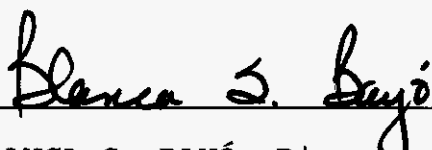
ORDERED by the Florida Public Service Commission that the Office of Public Counsel's alternative motion to modify stay is granted to the extent set forth herein. It is further

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ORDERED that the Office of Public Counsel's motion for reconsideration is denied. 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 14th day of February, 1997.

  
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BLANCA S. BAYÓ, Director  
Division of Records and Reporting

( S E A L )

LAJ

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), 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, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, 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.

Any party adversely affected by the portions of this order, which are preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code, if issued by a Prehearing Officer; (2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or (3) 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. A motion for reconsideration shall be filed with the Director, Division of Records and Reporting, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.

**SOUTHERN STATES UTILITIES, INC.**  
**DOCKET NO. 920199-WS**

Schedule No. 1

**WATER AND WASTEWATER**

**POTENTIAL  
 REFUNDS**

<b>Spring Hill service area</b>	<b>\$1,763,097</b>
/12 months	12
	<u>\$146,925</u>
Number of months until modified rates will be implemented: (SEPTEMBER 1993 - MARCH 1997)	42
	\$6,170,840
(13-month average annual interest rate      5.495% )	
Factored interest rate for 42 month period (per AFAD on 01/02/97)	<u>1.192325</u>
Potential refund as of March 1997	<b>\$7,357,646</b>
13-month average annual interest rate      5.495%	
Factored interest rate for 18 month period (Assume refund by 09/98)	<u>1.082425</u>
<b>Amount of potential refunds for Spring Hill service area:</b>	<b><u>\$7,964,100</u></b>

<b>Potential annual refund for all other service areas</b>	<b>\$1,949,512</b>
/12 months	12
	<u>\$162,459</u>
Number of months until interim rates were implemented: (SEPTEMBER 1993 - JANUARY 1996)	28
	\$4,548,861
(13-month average annual interest rate      5.495% )	
Factored interest rate for 28 month period (per AFAD on 01/02/97)	<u>1.12821667</u>
Potential refund as of January 1996	<b>\$5,132,101</b>
13-month average annual interest rate      5.495%	
Factored interest rate for 32 month period (Assume refund by 09/98)	<u>1.14653333</u>
<b>Amount of potential refunds for remaining service areas:</b>	<b><u>\$5,884,125</u></b>

**AMOUNT OF TOTAL POTENTIAL REFUNDS:      \$13,848,225**