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FLORIDA PUBLIC SERVICE COMMISSION

Gerald L. Gunter Building  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850

M E M O R A N D U M

August 9, 1995

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING

FROM: DIVISION OF LEGAL SERVICES (JABER, O'SULLIVAN)   
DIVISION OF WATER AND WASTEWATER (WILLIS)

RE: DOCKET NO. 950495-WS -- APPLICATION FOR RATE INCREASE AND INCREASE IN SERVICE AVAILABILITY CHARGES BY SOUTHERN STATES UTILITIES, INC. 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.

DATE: AUGUST 15, 1995 - DECISION PRIOR TO HEARING - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: 60 DAY SUSPENSION - OCTOBER 1, 1995

SPECIAL INSTRUCTIONS: I:\PSC\LEG\WP\9504952.RCM

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DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

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CASE BACKGROUND

Southern States Utilities, Inc. (SSU or utility) is a Class A utility, which provides water and wastewater service to 139 service areas in 22 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 Statutes, and increased service availability charges. SSU requested rate relief in 22 counties, but its original application did not include SSU's facilities in Hernando, Hillsborough and Polk Counties. At the August 1, 1995, Agenda Conference, the Commission voted to consider SSU's failure to include those three counties in its request, a deficiency; and therefore, an official filing date was not established. On August 2, 1995, SSU filed the deficiencies related to Hernando, Polk, and Hillsborough Counties. That date has been established as the official filing date.

On July 14, 1995, the Office of Public Counsel (OPC) filed a notice of intervention. OPC's intervention was acknowledged by Order No. PSC-95-0901-PCO-WS, issued on July 26, 1995. On July 21, 1995, SugarMill Woods Civic Association, Inc. (SugarMill Woods) filed a petition for leave to intervene in this docket.

On July 12, 1995, the Prehearing Officer issued Order No. PSC-95-0829-PCO-WS, establishing an initial service hearing schedule. On July 24, 1995, SugarMill Woods timely filed a Petition for Full Commission Review of Order No. PSC-95-0829-PCO-WS. No party has filed a response to SugarMill Woods' Petition. On August 4, 1995, the Commission issued Order No. 95-0942-PCO-WS, cancelling all service hearing dates for the month of August. Those service hearings will be rescheduled at a later date.

On August 8, 1995, Counsel for SugarMill Woods filed a Petition of Intervention for Spring Hill Civic Association (Spring Hill) and a cover letter to Staff Counsel stating that "the rescheduling of the service hearing in Citrus County from August 1995 to January 24, 1996 more than adequately addresses the complaint...." On the same date, Spring Hill filed a Petition for Full Commission Review of Order No. PSC-95-0829-PCO-WS, alleging that the service hearing date scheduled for Hernando County was unsatisfactory for his new client, Spring Hill.

This recommendation addresses both petitions for full Commission review of Order No. PSC-0829-PCO-WS.

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DISCUSSION OF ISSUES

ISSUE 1: Should the Commission grant SugarMill Woods' Petition for Full Commission Review of Order No. PSC-95-0829-PCO-WS?

STAFF RECOMMENDATION: SugarMill Woods' petition is rendered moot by Order No. PSC-95-0942-PCO-WS, which cancelled the August service hearing dates. (Jaber, O'Sullivan, Willis)

STAFF ANALYSIS: In Order No. PSC-0829-PCO-WS, the Prehearing Officer established dates for 12 service hearings at locations throughout Florida. The first service hearing was scheduled for August 17, 1995, in Ft. Myers, Florida, and the last one was scheduled for September 28, 1995, in New Port Richey. The service hearing in Citrus County (SugarMill Woods) was to be held on August 24, 1995. SugarMill Woods timely filed its Motion for Full Commission Review of Order No. PSC-0829-PCO-WS on July 24, 1995.

In its Motion, SugarMill Woods correctly states that because an official filing date has not been established, SSU has not placed the rate petition, MFRs, and rate case synopsis in its business offices or main county libraries. SugarMill Woods cites to Rule 25-22.0407(3), Florida Administrative Code, and recognizes that the utility is not required to place any of the information stated above until thirty days after the official filing date has been established by the Commission.

Rule 25-22.0407(3), Florida Administrative Code, provides the following:

Within 30 days after the official date of filing established by the Commission, the utility shall place a copy of the petition and the MFRs at its official headquarters and at any business offices it has in the service areas included in the rate request. Such copies shall be available for public inspection during the utility's regular business hours. If the utility does not have a business office in a service area included in its rate request, the utility shall place a copy of the petition and the MFRs at the main county library, the local community center or other appropriate location which is within or most convenient to the service area and which is willing to accept and provide public access to the copies. The Commission may require that copies of

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the petition and MFRs be placed at other specified locations.

According to Rule 25-22.0407(3), Florida Administrative Code, the utility has to place a copy of the rate case synopsis at all locations where copies of the petition and MFRs are placed within 30 days after the official filing date.

SugarMill Woods contends that the service hearing should be rescheduled in order to allow customers time to familiarize themselves with the rate filing, MFRs, and the rate case synopsis, so that they may prepare for the service hearing. Specifically, SugarMill Woods requests that the Commission reschedule the service hearing to begin no later than 60 days after SSU's full rate filing and MFRs have been received by the local business office or main county library in each service area.

After the Commission decided that SSU's failure to include Hillsborough, Polk, and Hernando Counties in its filing constituted a deficiency, the Prehearing Officer issued Order No. PSC-95-0942-PCO-WS, cancelling the August Service hearing dates. Staff believes that Order No. PSC-95-0942-PCO-WS renders SugarMill Woods' motion moot. Tentatively, SugarMill Woods' service hearing in Citrus County has been scheduled for January 24, 1996. This date has more than adequately given the residents of Citrus County sufficient time to review all information provided by the utility. Furthermore, although Counsel for SugarMill Woods did not withdraw the petition, he has stated in his letter dated August 8, 1995, to Staff Counsel, that his complaint has been adequately addressed with respect to SugarMill Woods.

Based on the foregoing, Staff recommends that the Commission find that SugarMill Woods' Petition for Full Commission Review of Order No. PSC-95-0829-PCO-WS is moot.

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**ISSUE 2:** Should the Commission grant Spring Hill Civic Association's request for Full Commission Review of Order No. PSC-95-0829-PCO-WS?

**STAFF RECOMMENDATION:** No. Spring Hill Civic Association's request for Full Commission Review of Order No. PSC-95-0829-PCO-WS should be denied. (Jaber, O'Sullivan, Willis)

**STAFF ANALYSIS:** On August 8, 1995, Spring Hill filed a Petition for Full Commission Review of Order No. PSC-95-0829-PCO-WS, establishing the initial service hearing dates, and specifically requests that the Hernando County service hearing be rescheduled so as to begin not sooner than 60 full days after SSU's full rate filing and MFRs have been received by the local business office or main county library. The grounds for this motion are identical to those alleged in SugarMill Woods' Motion and for the sake of brevity, will not be repeated here. Staff recommends that Spring Hill's Petition should be denied for the reasons set forth below.

The Hernando County service hearing has been tentatively scheduled for September 11, 1995. However, at the time of filing this recommendation, the Hernando County service hearing has not been confirmed by any Order and was not addressed in Order No. PSC-95-0829-PCO-WS. Therefore, with respect to Spring Hill, there is nothing yet to reconsider.

According to Rule 25-22.038(2), a party who is adversely affected by an order of the prehearing officer may seek reconsideration by the prehearing officer, or by the Commission panel assigned to the proceeding, within 10 days of service of the order. While it was not captioned as such, Spring Hill's petition does seek reconsideration. However, Spring Hill is not adversely affected by Order No. PSC-95-0829-PCO-WS. Accordingly, Spring Hill's Petition should be denied. Even further, the Prehearing Officer's Order was issued on July 12, 1995. A timely motion for reconsideration should have been filed on or by July 24, 1995. Spring Hill's Petition was filed on August 8, 1995. Accordingly, Spring Hill's Petition should be denied.

If the Commission chooses to consider Spring Hill's generic suggestion that the Prehearing Officer erred by establishing a service hearing schedule prior to an official filing date, Staff believes that Spring Hill's Petition should still be denied. First, Spring Hill has not met the standard for reconsideration as set forth in Diamond Cab Co. of Miami v. King, 146 So. 2d 889, 891

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(Fla. 1962). In Diamond Cab, the Florida Supreme Court declared that the purpose of a petition for reconsideration is to bring to an agency's attention a point of law or fact which it overlooked or failed to consider when it rendered its order. 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 upon specific factual matters set forth in the record and susceptible to review. Staff has applied this rationale in its review of Spring Hill's Motion.

In its petition, Spring Hill fails to demonstrate a mistake of law of fact. Neither the statutes nor the Commission rules require the Commission to wait a certain amount of time before scheduling a service hearing. Section 367.081, Florida Statutes, basically states that if the Commission does not enter a final order within eight months of the official filing date, SSU's requested rates must go into effect. Furthermore, for practical reasons, a technical hearing should be held within five months of the official filing date in order to allow sufficient time for the filing of briefs, the recommendation and a final vote. The Commission wishes to schedule 14 service hearings to hear from SSU customers throughout the state. Given the number of service hearings necessary in this docket and the Commission's calendar, it would be impossible to schedule all service hearings 60 days after SSU files its MFRs with the local business office and county library.

According to Section 367.081(2)(a), Florida Statutes, the Commission must consider the value and quality of service provided to the customers. While the Commission does not limit the nature of customer testimony to that subject, in accordance with Section 367.081, Florida Statutes, the primary purpose of service hearings is to take customer testimony concerning quality of service.

SugarMill Woods' petition does not distinguish between testimony offered at service hearings, and testimony offered by witnesses at the technical hearing. While it is appropriate to schedule service hearings, whenever possible, to permit customers sufficient time to review information about the utility's petition, Staff does not believe that the purpose of service hearings is to present technical testimony. SugarMill Woods will have the opportunity to present substantive testimony at the technical hearing. It is also important to note here that the Office of Public Counsel has intervened on behalf of the customers.

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Based on the foregoing, Staff recommends that the Commission deny SugarMill Woods' petition.