

FLORIDA PUBLIC SERVICE COMMISSION  
Capital Circle Office Center, 2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850

M E M O R A N D U M

March 4, 1996

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING

FROM: DIVISION OF LEGAL SERVICES (JABER, DAVIS) *J. Davis*  
DIVISION OF WATER AND WASTEWATER (WILLIS, CHASE, RENDELL) *W. Chase*

RE: UTILITY: SOUTHERN STATES UTILITIES, INC.  
DOCKET NO. 920199-WS  
COUNTY: BREVARD, CHARLOTTE/LEE, CITRUS, CLAY, DUVAL,  
HIGHLANDS, LAKE, MARION, MARTIN, NASSAU,  
ORANGE, OSCEOLA, PASCO, PUTNAM, SEMINOLE,  
VOLUSIA, WASHINGTON, COLLIER, AND HERNANDO

CASE: APPLICATION FOR A RATE INCREASE

AGENDA: MARCH 5, 1996 - REGULAR AGENDA - PARTIES MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: I:\PSC\LEG\WP\920199-R.RCM

CASE BACKGROUND

Southern States Utilities, Inc., (SSU or utility) is a Class A water and wastewater utility operating in various counties in the State of Florida. On May 11, 1992, SSU filed an application to increase the rates and charges for 127 of its water and wastewater service areas regulated by this Commission. The official date of filing was established as June 17, 1992. By Order No. PSC-93-0423-FOF-WS, issued March 22, 1993, the Commission approved an increase in the utility's final rates and charges, basing the rates on a uniform rate structure. On September 15, 1993, pursuant to the provisions of Order No. PSC-93-0423-FOF-WS, Commission Staff approved the revised tariff sheets and the utility proceeded to implement the final rates.

On October 8, 1993, Citrus County and Cypress and Oak Villages (COVA), now known as Sugarmill Woods Civic Association (Sugarmill Woods), filed a Notice of Appeal of the Final Order in the First District Court of Appeal. That Notice was amended to include the Commission as a party on October 12, 1993. On October 18, 1993, the utility filed a Motion to Vacate Automatic Stay. By Order No. PSC-93-1788-FOF-WS, issued December 14, 1993, the Commission granted the utility's motion to vacate the automatic stay. The

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FFSC-RECORDS/REPORTING

DOCKET NO. 920199-WS  
MARCH 4, 1996

Order on Reconsideration, Order No. PSC-93-1598-FOF-WS, was issued on November 2, 1993. On November 19, 1993, the Office of Public Counsel (OPC) filed its notice of appeal.

On April 6, 1995, the Commission's 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). A mandate was issued by the First District Court of Appeal on July 13, 1995. SSU sought discretionary review by the Florida Supreme Court. The Commission filed a Notice of Joinder and Adoption of SSU's Brief. On October 27, 1995, the Supreme Court denied jurisdiction.

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, the Commission ordered SSU 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. OPC, Citrus County, Spring Hill Civic Association (Spring Hill), and Sugarmill Woods Civic Association (Sugarmill Woods) filed responses to SSU's motion. Spring Hill is not a party in this docket.

The Commission considered the utility's motion for reconsideration and various other pleadings filed by the parties at the February 20, 1996, Agenda Conference. The Commission denied SSU's motion for reconsideration and disposed of all outstanding motions filed in this docket. The order memorializing the Commission's vote is due to be issued on March 11, 1996. On February 29, 1996, the Supreme Court of Florida issued its opinion in GTE Florida, Inc. v. Clark, No. 85,776 (Fla SCT. Feb. 29, 1996), which may have an impact on the Commission's decision in this case.

**DISCUSSION OF ISSUES**

**ISSUE 1:** What impact, if any, does the Supreme Court's February 29, 1996, opinion in the GTE case have on the Commission's decision regarding the remand in this docket?

**RECOMMENDATION:** The Commission should issue an order which bifurcates its February 20, 1996 decision regarding reconsideration matters as set forth below. The Commission should delay consideration of whether, on its own motion, to require backbilling until briefs are filed by the parties regarding their view of whether the GTE decision is applicable to the Commission's remand decision. All parties listed below should be given an opportunity to file briefs limited to this point as set forth below within 10 days of the Court's opinion becoming final. (JABER, DAVIS)

**STAFF ANALYSIS:** The parties involved in this docket, SSU, Sugarmill Woods, Citrus County and OPC filed pleadings in this docket related to reconsideration. Those matters were all considered at the February 20, 1996, Agenda Conference. At that agenda conference, the Commission voted to deny petitions to intervene filed by Putnam County and the City of Keystone Heights, granted Sugarmill Woods' motion to strike certain affidavits, denied Sugarmill Woods' motion to strike portions of SSU's motion for reconsideration, denied in part and granted in part SSU's motion for reconsideration, and denied SSU's motion to file a reply. As stated in the background, the order memorializing the Commission's vote is due to be issued on March 11, 1996.

On February 29, 1996, the Supreme Court of Florida rendered its opinion in the matter of GTE Florida Inc. v. Clark, No. 85,776 (Fla SCt. Feb. 29, 1996). The GTE opinion may have an impact on the Commission's original decision in this docket regarding compliance with the First District Court of Appeal's opinion in the SSU case. In the GTE case, the Supreme Court has reversed the Commission's order implementing the GTE remand. The Court has mandated that GTE be allowed to recover its erroneously disallowed expenses through the use of a surcharge. In its opinion, the Court states that imposition of a surcharge to recover the previously disallowed expenses would not constitute retroactive ratemaking. Further, the Court states that it views "... utility ratemaking as a matter of fairness. Equity requires that both ratepayers and utilities be treated in a similar matter." Upon reviewing the opinion, Staff believes that this raises a question of whether the Court's opinion requires the Commission to allow SSU to backbill

DOCKET NO. 920199-WS  
MARCH 4, 1996

the customers who paid less under the uniform rate structure than they would pay under the modified stand alone rate structure. Because the order on reconsideration is due to be issued on March 11, 1996, Staff believes it is important to bring this matter to the Commission's attention as quickly as possible.

However, Staff believes the GTE opinion has no impact on the Commission's decision to order SSU to make refunds. Therefore, Staff recommends that the Commission issue an order which memorializes its decision on the refund. Further, Staff recommends that the Commission should delay consideration of whether, on its own motion, to require backbilling until briefs are filed by the parties regarding their view of whether the GTE decision is applicable to the Commission's remand decision. Staff believes that the Commission should have input from the parties on this matter through the filing of briefs. Accordingly, Staff recommends that the Commission allow parties to file briefs within ten days of the Court's opinion becoming final. If no party to the GTE case asks for rehearing, the opinion becomes final on March 15, 1996. If a party does ask for rehearing, briefs will not be necessary pending the Court's final decision. The specific question to be briefed is: **Whether the Supreme Court's February 29, 1996, decision in the GTE case requires the backbilling of customers in the SSU case who paid less under the uniform rate structure than they would pay under the modified stand alone rate structure.**