

FLORIDA PUBLIC SERVICE COMMISSION  
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Tallahassee, Florida 32399-0850

M E M O R A N D U M

APRIL 24, 1997

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING

FROM: DIVISION OF LEGAL SERVICES (O'SULLIVAN) *ms*  
DIVISION OF WATER AND WASTEWATER (MERCHANT) *pm* *BP*

RE: UTILITY: SOUTHERN STATES UTILITIES, INC.  
DOCKET NO. 950495-WS  
CASE: SOUTHERN STATES UTILITIES, INC. APPLICATION 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, HERNANDO, HIGHLANDS, HILLSBOROUGH,  
LAKE, LEE, MARION, MARTIN, NASSAU, ORANGE, OSCEOLA,  
PASCO, POLK, PUTNAM, SEMINOLE, ST. JOHNS, ST. LUCIE,  
VOLUSIA, AND WASHINGTON COUNTIES.  
COUNTY: SEE ABOVE

AGENDA: MAY 6, 1997 - MOTIONS ON RECONSIDERATION OF POST HEARING  
DECISION -- FOR ISSUE 2, PARTICIPATION IS DEPENDENT UPON  
THE COMMISSION'S VOTE IN ISSUE 1 -- FOR ALL OTHER ISSUES  
PARTICIPATION IS LIMITED TO COMMISSIONERS AND STAFF

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: I:\PSC\LEG\WP\950495.RCM

CASE BACKGROUND

Southern States Utilities, Inc. (SSU or utility) is a Class A utility, which provides water and wastewater service to 152 service areas in 25 counties. In 1994, the utility recorded total company operating revenues of \$23,498,289 and \$16,985,104 for water and wastewater, respectively. The resulting total company net operating income for that same period was \$3,445,315 for water and \$2,690,791 for wastewater. SSU reported that in 1994 it had 102,514 and 43,131 respective water and wastewater customers for the total utility. While SSU has recently changed its name to Florida Water Services Corporation, for the purpose of consistency, Staff will refer to the utility as SSU in this recommendation.

On June 28, 1995, SSU filed an application for approval of uniform interim and final water and wastewater rate increases for 141 service areas in 22 counties, pursuant to Sections 367.081 and 367.082, Florida Statutes, respectively. The utility also

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requested a uniform increase in service availability charges, approval of an allowance for funds used during construction (AFUDC) and an allowance for funds prudently invested (AFPI). August 2, 1995, was established as the official date of filing. The utility's application for increased final water and wastewater rates was based on the projected twelve-month period ending December 31, 1996. The utility requested a rate of return of 10.32 percent, which would result in additional annual operating revenues of \$18,137,502 for the utility's combined water and wastewater operations.

By Order No. PSC-95-1327-FOF-WS, issued November 1, 1995, the Commission denied SSU's initial request for interim rate relief based on a projected test year, suspended the proposed final rates, and allowed the utility to file another petition for interim rates. SSU filed its supplemental petition for interim revenue relief on November 13, 1995 which was granted by Order No. PSC-96-0125-FOF-WS, issued January 25, 1996, based upon the historical test year ended December 31, 1994.

The Commission held 24 customer service hearings throughout the state during the pendency of this rate proceeding, and a ten-day technical hearing from April 29 through May 10, 1996. The Commission also held an additional day of hearing on May 31, 1996, to consider rate case expense.

By Order No. PSC-96-1320-FOF-WS, issued October 30, 1996, (Final Order) the Commission set forth its final determination as to SSU's rates and charges, and all other matters raised during the proceedings. On November 1, 1996, SSU filed a notice with the Commission indicating its appeal of the Final Order to the First District Court of Appeal (the Court).

On December 3, 1996, SSU filed a motion requesting a stay of the refund of interim rates and a portion of the AFPI charges pending appeal, and a release or modification of the bond securing interim refunds. By Order No. PSC-97-0099-FOF-WS (Stay Order), issued January 27, 1997, the Commission granted SSU's request to stay the refund of interim rates, but denied SSU's request to stay a portion of the Allowance for Funds Prudently Invested (AFPI) charges approved by the Final Order. On February 11, 1997, SSU filed a motion for reconsideration of the Stay Order, accompanied by a request for oral argument. This recommendation addresses the utility's request for oral argument and motion for reconsideration of the Stay Order in Issues 1 through 3.

On January 9, 1997, the Office of Public Counsel (OPC) filed a motion requesting that the prehearing officer establish a schedule for filing motions for reconsideration, and on January 15,

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1997, OPC filed a motion for reconsideration of the Final Order. On February 19, 1997, the prehearing officer issued Order No. PSC-97-0190-PCO-WS, denying OPC's request to establish a schedule.

By Order No. PSC-97-0374-FOF-WS (Reconsideration Order), issued April 7, 1997, the Commission addressed several motions for reconsideration of the Final Order, including OPC's January 15, 1997, motion. That order denied OPC's motion because it was untimely filed.

On March 3, 1997, OPC filed a motion requesting that the full Commission reconsider the prehearing officer's denial of OPC's request for a schedule Order No. PSC-97-0190-PCO-WS, accompanied by a request for oral argument on its motion. SSU filed responses to both motions. OPC's motion for reconsideration of the prehearing officer's order and request for oral argument are addressed in Issues 4 and 5 of this recommendation.

On March 24, 1997, the Tropical Isles Homeowners Association (TIHA) filed a petition for intervention in this docket and a petition requesting that the Commission levy a fine for failure to comply with a Commission order and establish wastewater rates based upon consumption data, and offering to take over the facilities. TIHA's motion relates to the portion of the Final Order which required the utility to provide a report to the Commission regarding water consumption data and the potential adjustment of the residential wastewater-only rate for the Tropical Isles service area. SSU's filed a response to the petitions on April 7, 1997, and included a motion to dismiss TIHA's petitions. TIHA responded to the motion to dismiss on April 15, 1997. Staff will file a recommendation regarding TIHA's petitions and the motion to dismiss on May 7, 1997, for consideration at the May 20, 1997, agenda.

**DISCUSSION OF ISSUES**

**ISSUE 1:** Should the Commission grant SSU's motion for oral argument on its motion for reconsideration?.

**RECOMMENDATION:** Yes. Oral argument should only be heard from the utility, and should be limited to 10 minutes. (O'SULLIVAN)

**STAFF ANALYSIS:** According to Rule 25-22.058(1), Florida Administrative Code, a party requesting oral argument must state its request in a separate document which accompanies the relevant motion. Additionally, the request must "state with particularity why oral argument would aid the Commission in comprehending and evaluating the issues before it." The granting of oral argument on a motion for reconsideration is solely at the Commission's discretion. Rule 25-22.060(1)(f), Florida Administrative Code.

By motion filed on February 11, 1997, the utility requested oral argument to address its motion for reconsideration. The utility contends that oral argument will aid the Commission in understanding its motion for reconsideration. It further asserts that oral argument is appropriate given the complexity of the primary and alternative requests for relief related to the stay of the AFPI charges.

Staff recommends that SSU's request complies with the above-cited rules, and that oral argument will permit the Commission to fully explore the issue. As addressed in Issue 2 of this recommendation, SSU's AFPI charges and the proposals for stay imposed by SSU are complex. The review of the motion for reconsideration and the stay request involves extensive examination of numerous schedules, orders, and calculations. Therefore, Staff recommends that the Commission grant the utility's request for oral argument on its motion for reconsideration. If the Commission wishes to hear oral argument on the utility's motion, Staff recommends that oral argument be limited to 10 minutes. Furthermore, oral argument should only be heard from the utility. Pursuant to Rule 25-22.060(1)(f), Florida Administrative Code, a party who does not file a written response to a point on reconsideration cannot address that point during oral argument. As noted herein, no response was filed to SSU's motion for reconsideration.

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**ISSUE 2:** Should the Commission grant SSU's Motion for Reconsideration of the Stay Order related to the partial stay of AFPI charges?

**RECOMMENDATION:** Yes, in part. The utility's primary request to switch from the pre-rate case charges when the Final Order charges increase above the pre-rate case charges should be denied. The utility's alternate request to stay those charges in the Final Order which were lower than the pre-rate case charges should be granted, pending appeal. The request to stay those charges which have been corrected by Order No. PSC-97-0374-FOF-WS should be denied as moot. The request to implement the AFPI charges for the Valencia Terrace water transmission and distribution facilities and wastewater collection facilities should be denied, as these facilities had no prior AFPI tariff and the Final Order did not establish non-used and useful plant for these facilities. (O'SULLIVAN, MERCHANT)

**STAFF ANALYSIS:** The standard for determining whether reconsideration is appropriate is set forth in Diamond Cab Company of Miami v. King, 146 So. 2d 889 (Fla. 1962). In Diamond Cab, the Court held that the purpose of a petition for reconsideration is to bring to an agency's attention a point of fact or law which was overlooked or which the agency failed to consider when it rendered its order. In Steward Bonded Warehouse v. Bevis, 294 So.2d 315 (Fla. 1974), the Court held that a petition for reconsideration should be based upon specific factual matters set forth in the record and susceptible to review. See also Pingree v. Quaintance, 394 So.2d 161 (Fla. 1st DCA 1981). Staff has applied this standard in this and all following issues regarding reconsideration.

SSU's motion for reconsideration focuses on the portion of the Stay Order related to AFPI charges. An AFPI charge is a mechanism to allow a utility to recover its prudent investment in its facilities. The charge escalates monthly, and is assessed at the time that a new customer connects. The Final Order established AFPI charges for SSU's facilities which were below 100 percent used and useful. However, the Commission denied the utility's request to retain previous AFPI charges for those facilities where the old charges were higher than the newly calculated schedule. Instead, the Final Order reset the charges.

SSU's stay request proposed two methods for staying the effect of the Final Order. Both alternates involved implementing the new AFPI charge for some facilities, but allowing SSU to assess the higher, previous charge for other facilities. The proposal also contemplated switching from the old charge to the new charge for several facilities, when the new charge escalated to a point where it exceeded the old charge.

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The Commission rejected SSU's request for a partial stay of the AFPI charges. The order recognized that several of the charges proposed by the utility were not part of the Final Order, or were not part of the utility's filing. The Commission also expressed concern over the utility's proposed switch of old and new charges, and the fact that SSU requested some, but not all of the charges be stayed. The Commission recognized the potential difficulty in backbilling, and ordered the utility to place a customer or developer on notice upon connection that the AFPI charge was subject to appeal, and may ultimately increase or decrease.

SSU's motion for reconsideration is premised upon three grounds: (1) the Commission made a mistake of fact as to the substance of SSU's stay request; (2) the Commission made a mistake of law as to the applicable standards; and (3) the Commission's decision was inconsistent with past decisions, and therefore, as an abuse of discretion, a mistake of law.

SSU's request for a partial stay was complex: it involved numerous calculations and options for almost 150 facilities. The nature of SSU's proposal could not be fully gleaned from the motion itself: an adequate review of the motion required extensive review, comparison and analysis of the utility's pre-rate case tariffs, its MFRS, used and useful calculations, the Final Order, and the schedules attached to the utility's stay proposal.

Staff has prepared an analysis of the utility's requested stay for both the primary and the alternative, which is attached at the end of this recommendation. We have analyzed each facility and detailed what charges SSU has requested to implement through its stay motion. For the majority of facilities (99), SSU wishes to keep the Final Order charges. For the 43 facilities that had prior tariffs, which were higher than the Final Order, SSU requested that the Final Order charges be stayed and the pre-rate case charges be implemented. Three of those facilities had pre-rate case charges which were greater than the approved AFPI cap established by the Commission in the Final Order, so SSU requested the approved cap charge. Further, in 17 of the 43, SSU requested in its primary request that the charges be switched from the pre-rate case to the Final Order charges when the latter became higher. These 17 facilities are the only differences between SSU's primary and alternative request for stay.

In five other facilities, SSU requested that it be allowed to implement its proposed charges when the Commission erred in not approving AFPI charges when the facilities were determined to be less than 100% used and useful and there were no pre-rate case charges tariffed. For two other facilities, SSU requested charges which it stated were its proposed charges, which in fact were not

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those proposed in its MFRs, with slight differences. There was one facility where SSU submitted charges which it reflected were approved by the Final Order, but in fact the AFPI charges reflected were those recommended by staff in its Final Recommendation. For the Marco Shores wastewater collection facilities, SSU reflected that the rates per the Order were implemented when in fact, the Final Order did not approve any charges. For the Lake Brantley water transmission and distribution facilities, SSU reflected that it had a pre-rate case tariff, but our review indicates it did not. For two of the Valencia Terrace facilities, SSU requested to implement its proposed charges stating that the Commission failed to set AFPI charges when it determined that the plant was less than 100%. The Final Order reflected that those facilities were, in fact, 100% used and useful.

As detailed below, Staff recommends that the Commission reconsider several points of its decision to deny SSU's request for a partial stay. While Staff does not believe that the Commission erred in its decision, Staff recommends that upon reconsideration, the Commission should permit the utility to implement its alternate stay proposal. Each aspect of the utility's motion for reconsideration is addressed below.

SSU contends that Staff's statements in the recommendation and at agenda were in error or irrelevant, and that the Stay Order is therefore premised upon a mistake of fact. SSU first contends that Staff mischaracterized several charges proposed by SSU as being "not in the record." There were several facilities that SSU presumed to be 100 used and useful, and therefore did not include an AFPI charge in its filing. However, SSU requested AFPI charges for all plants found to be less than 100 percent used and useful. The Commission erred in not approving AFPI charges for those facilities, corrected those mistakes in Order No. PSC-97-0374-FOF-WS (Reconsideration Order). The Stay Order, which was issued before the Commission reconsidered the AFPI charges, stated that several proposed charges were not addressed in the Final Order, or were not part of SSU's initial filing. SSU takes issue with this statement in the Stay Order, and asserts that the utility "should not now be made to suffer for errors made by the Commission staff or the Commission."

Staff believes that the Stay Order properly reflects that certain AFPI charges were omitted, and would be remedied elsewhere. Staff believes that its comments as cited in the transcript refer to that situation. Staff's comments and the recommendation are advisory, and are supplanted by the findings of the Stay Order. Furthermore, as detailed above, several charges proposed by the utility could not be found in the utility's pre-rate case tariffs, the MFRs, or the Final Order. Therefore, Staff does not believe

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that the Commission made a mistake of fact as to the characterization of several of the charges as not in the record. At the most, the Commission may wish to clarify the sentence on page 5 of the Stay Order which states that "[s]everal of the charges identified in the utility's attachment were not addressed in the Final Order, or were not part of SSU's initial filing" to indicate that the charges were those omitted in error.

In the Reconsideration Order, the Commission reconsidered on its own motion and corrected the omission of AFPI charges for several facilities, along with correcting several calculations which used an incorrect regulatory assessment fee percent. (See order at 19-21, and Schedule No. 10 for each facility). SSU may implement those charges once it provides notice and its tariffs are approved.

As noted in the Stay Order, a stay was not the appropriate mechanism to address errors made in Final Order (Stay Order at 5-6). The Commission has now corrected those errors and approved those charges in the Reconsideration. In effect, the utility's request for reconsideration as the stay for those facilities is moot, as the charges have in fact been approved by separate order. As of the date of filing this recommendation, the utility has not filed its tariff pages for these charges. Other than the charges requested to be implemented for the Valencia Terrace facilities, all other requests dealing with implementing proposed charges have been addressed.

SSU contends that Staff, and thereby the Stay Order, mischaracterized the switching from one charge to another as not being in the record, and that the switching could have been extrapolated from facts already in the record. SSU asserts that the switch is necessary in order to insure that no backbilling will occur.

While the charges were either requested by the utility or in the record, the treatment proposed in the stay of "switching" was not. In essence, SSU requested that a stay be imposed upon each particular facility's charge, until the charge under the Final Order would overtake the old charge. Then the utility wished to lift that stay to employ the newly approved charge once it exceeds the previous charge. In the example noted on page 5 of the Stay Order, the utility proposed to stay the Commission's decision and collect the old charge of \$120.17 for the Citrus Springs wastewater treatment plant and disposal facilities until August of 1997, when it then wanted to "lift" the stay as to that facility and implement the higher charge. For each system in this situation, the utility proposed lifting the stay at different times, depending upon when the new charge exceeded the prior charge.



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Staff believes that the Stay Order recognized the complexity of this proposal, and the fact that the utility proposed to employ two different charge structures for AFPI, dependent upon which charge was highest. The concerns over the unusual treatment of the charges certainly were relevant to the Commission's consideration of SSU's proposal. Staff therefore recommends that reconsideration is not appropriate on this point.

SSU next asserts that the Stay Order is flawed in its misunderstanding of the purpose and effect of a stay, the legality of partitioning an order, and the discretionary standard. Citing Hirsch v. Hirsch, 309 So.2d 47 (Fla. 3d DCA 1975), SSU contends that a purpose of a stay is to "...restore or preserve the status quo or to stay execution of an order or judgment." Id. at 50. SSU states in its motion that it requested a continuation of AFPI charges in effect for the facilities where the Commission reset the AFPI charge, thereby maintaining the status quo of those facilities. However, taken in their entirety, the two proposals would not maintain either the situation that existed before the Final Order was issued, nor would it maintain the situation created by the Final Order. It would create a situation wherein the utility would collect the highest charge for each facility. Therefore, while Staff recommends that SSU be permitted to implement a partial stay, it does not believe that the Commission erred in its understanding of the purpose of the stay.

The utility asserts that the Commission made a mistake of law by "failing to recognize its authority to impose conditions for a stay which temporarily sanctions relief different from a judgment, subject to adequate security protections," and that the Stay Order made no finding that SSU's proposed conditions were unlawful. (Motion at 7). Staff recommends that the Commission made no mistake of law as to understanding its authority or the nature of the utility's request. First, as noted above, the Commission's concern was not that the stay request differed from the Final Order, but that it created a new situation not before contemplated. SSU's request was not a "condition" of the stay but rather a substantive treatment of AFPI charges. Moreover, Rule 25-22.061(2), Florida Administrative Code, and Rule 9.310(a), Florida Rules of Appellate Procedure, do not impose a lawful standard upon the conditions of a stay.

SSU next argues that the Commission made a mistake of law by stating that it was inappropriate to stay only a portion of the AFPI charges. SSU contends that it would be inappropriate to require an appellant to seek a stay of a portion of an order that it did not intend to appeal. Moreover, SSU argues that the AFPI charges are severable.

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The Commission recognized in the Stay Order that while it had stayed portions of an order relating to a particular subject, SSU's request was unique in that it wished to stay only part of a particular category of charges. (Order at 5) As stated above, the Commission was concerned with imposing a stay as to some but not all of the elements of a particular category charge. For example, if a utility were to request a stay as to some but not all of its residential rates, the stayed charges would adversely impact the revenue requirement of the remaining charges. However, Staff recommends that the Commission recognize on reconsideration that, unlike rates and other charges, the AFPI charges for each facility are severable, and may be stayed without impacting those AFPI charges that are implemented.

SSU next argues that the Commission improperly applied the standard of discretion in reviewing SSU's motion for a partial stay. SSU cites the order at page 4, wherein the Commission notes that while the Commission may consider the factors listed in Rule 25-22.061(2), Florida Administrative Code, it is not required to impose a stay. Citing All Florida Surety Co. v. Coker, 79 So.2d 762, 765 (Fla. 1955), Thomas Jefferson Inc. v. Hotel Employees Union, Local 255, 81 So.2d 731, 733 (Fla. 1955), and Canakarlis v. Canakarlis, 382 So.2d 1197 (Fla. 1980), SSU states that a stay order will be reversed if arbitrary or unreasonable.

Staff believes that the cited language of the order does not indicate a predisposition to deny the motion. The language reiterates the standard of review of a stay motion, and also distinguishes the discretionary nature of a stay under Rule 25-22.061(2), Florida Administrative Code, as opposed to the mandatory stay of subsection (1) of that rule. As to the contention that the Commission erred by not considering the factors, the Stay Order identifies the points made by the utility at pages 3-4, and addresses the concern about potential backbilling by requiring the utility to notice its customers as they hook-up to the system.

The utility contends that the Commission's decision was inconsistent with rulings in other dockets, and with decisions made in the Stay Order. SSU argues that the Commission severed the interim refund of Lehigh and Marco Island from the refund of the Enterprise facility, but did not recognize the severability of AFPI charges. It also contends that the order increased the potential refund liability of interim rates, but did not permit SSU to implement a plan to insulate itself from potential AFPI backbilling.

Staff recommends that the Commission's decision on those issues stand on their own merits, and can be distinguished from the decision on AFPI rates. Moreover, Staff has recommended that the

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Commission reconsider its Stay Order and permit the utility to implement its alternate stay proposal, by in part, recognizing that the AFPI charges are severable, and that the utility may implement its proposal to collect charges which reduce its potential for backbilling

Given the fact that several facilities have now been addressed by the Reconsideration Order, and upon further review of the utility's proposal, Staff recommends that the Commission permit the utility to implement its alternate proposal to stay a portion of the AFPI charges approved by the Final Order. The request to stay those charges which have been corrected by Order No. PSC-97-0374-FOF-WS should be denied as moot. The request to implement the AFPI charges for the Valencia Terrace water transmission and distribution facilities and wastewater collection facilities should be denied, as these facilities had no prior AFPI tariff and the Final Order did not establish non-used and useful plant for these facilities. While Staff recommends that the Commission permit the utility to implement its alternate proposal, for the reasons stated above, it cannot recommend that the Commission reconsider its denial of the primary proposal.

As noted during the Agenda Conference addressing the stay, it is impossible to put a utility in the position while on appeal of charging the maximum charge possible, so that backbilling is never an issue. The Commission's rules on stay, and the legal concept of a stay, do not contemplate creating a situation of "minimum exposure", but rather, permit a utility to request that the Commission not implement its order. The Commission initially reviewed the motion for partial stay with this in mind. Staff recommends that while a stay should not be employed to permit a utility to collect its maximum potential rates, in this case the utility has demonstrated the severability of the AFPI charges, and the propriety of its proposal in order to prevent unnecessary backbilling.

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**ISSUE 3:** What is the appropriate security to guarantee the differences between the pre-rate case and the Final Order AFPI charges, which are subject to the stay?

**RECOMMENDATION:** If the Commission approves the partial stay recommended in Issue 2, The excess of the previously authorized charges should be collected subject to refund with interest. The utility should be required to file an escrow agreement to guarantee any potential refunds of the difference in AFPI revenues collected under the stay. The utility should deposit in the escrow account each month the difference in revenue between the pre-rate case tariffs and the charges approved in the Final Order. Pursuant to Rule 25-30.360(6), Florida Administrative Code, the utility should provide a report by the 20th day of each month indicating in detail the total amount of AFPI collect from the pre-rate case charges, the additional revenue collected through the pre-rate case charges, all on a monthly and total basis. (MERCHANT)

**STAFF ANALYSIS:** If the Commission approves the partial stay for the pre-rate case AFPI charges that are higher than those approved in the Final Order as recommended in Issue, appropriate protection must be provided in case the Commission's decision is upheld on appeal. The excess of the previously authorized charges should be collected subject to refund with interest. Since the AFPI charges increase each month and the number of customers connecting onto any given facility cannot be estimated, the amount of any potential refund in this case cannot be accurately calculated. Therefore, a bond or corporate undertaking is not appropriate and the utility should deposit in the escrow account each month the difference in revenue between the pre-rate case tariffs and the charges approved in the Final Order.

Pursuant to Rule 25-30.360(6), Florida Administrative Code, the utility should provide a report by the 20th day of each month indicating in detail the total amount of AFPI collect from the pre-rate case charges, the additional revenue collected through the pre-rate case charges, all on a monthly and total basis. The escrow agreement should be established between the utility and an independent financial institution pursuant to a written escrow agreement. The Commission should be a party to the written escrow agreement and a signatory to the escrow account. The written escrow agreement should state the following: that the account is established at the direction of this Commission for the purpose set forth above; that withdrawals of funds can only occur with the prior approval of the Commission; that the account should be interest bearing; that the Director of Records and Reporting must be signatory to the escrow agreement; that all information concerning the escrow account be available from the institution to the Commission or its representative at all times; and that

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pursuant to Cosentino v. Elson, 263 So. 2d 253 (Fla. 3d. DCA 1972), escrow accounts are not subject to garnishments.

If a refund to the customers or developers is required, all interest earned by the escrow account should be distributed to the customers and undertaken in accordance with Rule 25-30.360, Florida Administrative Code. If a refund to the customers is not required, the interest earned by the escrow account should revert to the utility.

In no instance should maintenance and administrative costs associated with any refund be borne by the customers. The costs are the responsibility of, and should be borne by, the utility.

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**ISSUE 4:** Should the Commission grant OPC's request for oral argument on its motion for reconsideration?

**RECOMMENDATION:** No. OPC has not demonstrated that oral argument would aid the Commission in its decision. (O'SULLIVAN)

**STAFF ANALYSIS:** As detailed in Issue 1, a request for oral argument must be made in a separate document which accompanies the relevant motion and must demonstrate why oral argument would assist the Commission in its decision. Oral argument on a motion for reconsideration is granted at the Commission's discretion. Rules 25-22.058(1) and 25-22.060(1)(f), Florida Administrative Code. OPC filed a request for oral argument along with its March 3, 1997, motion for reconsideration of Order No. PSC-97-0190-PCO-WS. OPC contends that the motion deals with an issue never before decided by the Commission, and that oral argument will assist in addressing this issue.

In its March 17, 1997, response, SSU opposes OPC's request for oral argument. SSU contends that OPC has not demonstrated that oral argument would aid the Commission in its determination. SSU disagrees with OPC's contention that its motion addresses issues never decided by the Commission, and points to recent decisions on untimely reconsideration petitions: City of Hollywood v. Public Employee Relations Commission, 432 So.2d 79 (Fla. 4th DCA 1983) and Citizens of the State of Florida v. North Fort Myers Utility, Inc. and the Public Service Commission (Fla. 1st DCA, Case No. 95-1439) (November 16, 1995, order dismissing appeal).

Staff does not agree with SSU's contention that there was nothing new about the law on the issue of the filing for reconsideration after a notice of appeal. While the cases cited above were relevant to the situation, and were relied upon in the Commission's decision, the situation presented was one of first impression before the Commission. Nevertheless, the Commission fully addressed this issue and ruled upon the timeliness of OPC's motion for reconsideration of the Final Order in Order No. PSC-97-0374-FOF-WS, issued April 7, 1997. Oral argument would not aid the Commission in its determination on this issue. Additionally, OPC did not request oral argument on its motion for reconsideration of the Final Order. Therefore, Staff recommends that the Commission deny OPC's request for oral argument.

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**ISSUE 5:** Should the Commission grant OPC's motion for reconsideration of Order No. PSC-97-0190-PCO-WS, which denied OPC's request to establish a schedule?

**RECOMMENDATION:** No. OPC has not demonstrated that a mistake of fact or law was made. Furthermore, the Commission has already denied OPC's motion for reconsideration of the Final Order as untimely, rendering this motion moot. (O'SULLIVAN)

**STAFF ANALYSIS:** According to Rule 25-22.060(3), Florida Administrative Code, a party must file for reconsideration of an order within 15 days of its issuance. The Final Order was issued on October 30, 1996, and SSU filed a notice of appeal two days later. On November 14, 1996, the group of homeowners associations known as Marco, et al. filed a motion for reconsideration of the final order with the Commission, and a motion with the First District Court of Appeal to remand jurisdiction back to the Commission. SSU filed a cross-motion for reconsideration on November 26, 1996. On December 31, 1996, the Court issued an order amending a prior order to indicate that the appeal was abated pending the Commission's disposition of all motions or cross-motions for reconsideration. However, the Court stated that the determination of the timeliness or propriety of any motion should be made by the Commission.

On January 9, 1997, OPC filed a motion requesting that the prehearing officer establish a schedule for the filing of motions for reconsideration. By Order No. PSC-97-0190-PCO-WS (Schedule Order), issued February 19, 1997, the prehearing officer denied the motion. The order cited the City of Hollywood and Citizens v. North Fort Myers Utility decisions, which held that the time schedules for seeking reconsideration cannot be extended by an agency. The order also noted that the full Commission would rule on all motions and cross motions.

On March 3, 1997, OPC filed a motion requesting that the full Commission reconsider the prehearing officer's decision. OPC asserts that the Schedule Order erroneously concluded that parties must file for reconsideration when an order has been appealed and the Commission has no jurisdiction. OPC states that the time limits set forth in Rule 25-22.060(3), Florida Administrative Code, should be construed to only apply when the Commission has the jurisdiction to take up such a motion. OPC argues that Schedule Order erroneously concludes otherwise, and effectively precludes a party from filing for reconsideration after an appeal.

In its March 17, 1997, response, SSU states its agreement with the prehearing officer's order, and contends that OPC has not provided a basis for reconsideration. SSU argues that OPC's motion

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did not point out a mistake of fact or law, but instead reargues its original motion, and attempts to raise new points.

The subject matter of OPC's instant motion, the merits of the prehearing officer's denial of its request to establish a schedule, has been fully considered by the Commission's denial of OPC's motion for reconsideration of the Final Order. In its April 7, 1997, Reconsideration Order, the Commission concluded that an agency cannot extend the time period for reconsideration motions. The Commission stated that a party could not thwart another's right to file for reconsideration by quickly filing for an appeal, because a litigant can petition an appellate court to relinquish jurisdiction to allow the post-hearing motion to be addressed. The Commission noted that Marco et al. did exactly that in this case. Given the appellate decisions regarding post-hearing filing, and the absence of any authority indicating that the time period can tolled, OPC's motion for reconsideration was denied as untimely (Reconsideration Order at 23-5).

These findings of the Reconsideration Order affirm the ruling made by the prehearing officer in the Schedule Order and render the instant motion for reconsideration moot. The Commission has already fully addressed the issue, and to allow further argument on a separate, but similar motion, would be inappropriate. In addition, while it raised disagreement with the order's interpretation of decisional and statutory law, OPC has not demonstrated that a mistake of fact or law was made in the Schedule Order. Therefore, Staff recommends that the Commission deny OPC's motion for reconsideration of the schedule order as moot.



Southern States Utilities, Inc.  
 Schedule of AFPI Stay Request - Primary  
 Test Year Ended December 31, 1996  
 (LEGEND ON LAST PAGE)

Attachment A

# PLANT NAME	Water		Wastewater	
	Treatment Plant	Transm. & Distrib System	Collection System	Treatment Plant
1 AMELIA ISLAND	NA	Order	Order	NA
2 APACHE SHORES	Order	Order	Order	Order
3 APPLE VALLEY	NA	NA	NA	NA
4 BAY LAKE ESTATES	NA	Order	NA	NA
5 BEACON HILLS	Pre-RC Capped	NA	NA	Pre-RC Capped
6 BEECHER'S POINT	NA	Order	Order	Order
7 BUENAVENTURA LAKES	NA	NA	NA	Order
8 BURNT STORE	Proposed	Pre-RC Capped	Pre-RC Capped	Proposed
9 CARLTON VILLAGE	NA	Order	NA	NA
10 CHULUOTA	Order	Order	Order	Pre-RC/Order Cap
11 CITRUS PARK	NA	NA	NA	NA
12 CITRUS SPRINGS	Order (<Pre-RC)	Pre-RC Capped	Order	Pre-RC to Order
13 CRYSTAL RIVER HIGHLANDS	Order	Order	NA	NA
14 DAETWYLER SHORES	NA	NA	NA	Proposed
15 DEEP CREEK	NA	Order	Order	NA
16 DELTONA	Pre-RC Capped	Order	Order	Pre-RC to Proposed
17 DOL RAY MANOR	Order	Order	NA	NA
18 DRUID HILLS	NA	NA	NA	NA
19 EAST LAKE HARRIS ESTATES	NA	NA	NA	NA
20 FERN PARK	NA	NA	NA	NA
21 FERN TERRACE	NA	NA	NA	NA
22 FISHERMAN'S HAVEN	NA	NA	NA	Proposed
23 FLA CENTRAL COMMC PARK	NA	NA	Pre-RC to Order	Pre-RC/Order Cap
24 FOUNTAINS	Order	Order	NA	NA
25 FOX RUN	NA	NA	NA	NA
26 FRIENDLY CENTER	NA	NA	NA	NA
27 GENEVA LAKE ESTATES	NA	Order	NA	NA
28 GOLDEN TERRACE	NA	NA	NA	NA
29 GOSPEL ISLAND ESTATES	NA	Pre-RC Capped	NA	NA
30 GRAND TERRACE	NA	NA	NA	NA
31 HARMONY HOMES	NA	NA	NA	NA
32 HERMITS COVE	Order	Order	NA	NA
33 HOBBY HILLS	Order	Order	NA	NA
34 HOLIDAY HAVEN	NA	Order	Order	Order
35 HOLIDAY HEIGHTS	NA	NA	NA	NA
36 IMPERIAL MOBILE TERRACE	NA	NA	NA	NA
37 INTERCESSION CITY	NA	Close to Proposed	NA	NA
38 INTERLACH LKS/PARK MANOR	Pre-RC to Order	Order	NA	NA
39 JUNGLE DEN	NA	Order	Order	Order
40 KEYSTONE CLUB ESTATES	Order	Order	NA	NA
41 KEYSTONE HEIGHTS	NA	Pre-RC to Order	NA	NA
42 KINGSWOOD	NA	NA	NA	NA
43 LAKE AJAY ESTATES	NA	NA	NA	NA
44 LAKE BRANTLEY	NA	Not Anything	NA	NA
45 LAKE CONWAY PARK	NA	Order	NA	NA
46 LAKE HARRIET ESTATES	NA	NA	NA	NA
47 LAKESIDE	NA	Order	NA	NA
48 LAKEVIEW VILLAS	NA	NA	NA	NA
49 LEHIGH	Pre-RC to Order	Order	Pre-RC to Order	Pre-RC to Order
50 LEILANI HEIGHTS	NA	NA	NA	NA
51 LEISURE LAKES	NA	Order	Order	Pre-RC Capped
52 MARCO ISLAND	Close to Proposed	Order	NA	Pre-RC-Order Cap
53 MARCO SHORES	Pre-RC to Order	NA	Not Anything	Pre-RC to Order

Southern States Utilities, Inc.  
 Schedule of AFPI Stay Request - Primary  
 Test Year Ended December 31, 1996  
 (LEGEND ON LAST PAGE)

Attachment A

# PLANT NAME	Water		Wastewater	
	Treatment Plant	Transm. & Distrib System	Collection System	Treatment Plant
54 MARION OAKS	Pre-RC Capped	Pre-RC Capped	Pre-RC Capped	Order (Pres> 2-2000)
55 MEREDITH MANOR	Order	Order	Order	NA
56 MORNINGVIEW	NA	Order	Order	Order
57 OAK FOREST	NA	Order	NA	NA
58 OAKWOOD	NA	NA	NA	NA
59 PALISADES COUNTRY CLUB	NA	Pre-RC Capped	NA	NA
60 PALM PORT	Pre-RC Capped	Pre-RC Capped	Order	Order
61 PALM TERRACE	NA	NA	Order	NA
62 PALM VALLEY	NA	NA	NA	NA
63 PALMS MOBILE HOME PARK	NA	Order	NA	NA
64 PARK MANOR	NA	NA	NA	NA
65 PICCIOLA ISLAND	NA	NA	NA	NA
66 PINE RIDGE	NA	Pre-RC to Order	NA	NA
67 PINE RIDGE ESTATES	Proposed	NA	NA	NA
68 PINEY WOODS	NA	Order	NA	NA
69 POINT O'WOODS	NA	Pre-RC to Order	Order	Pre-RC to Order
70 POMONA PARK	NA	Order	NA	NA
71 POSTMASTER VILLAGE	Order	Order	NA	NA
72 QUAIL RIDGE	NA	Pre-RC Capped	NA	NA
73 REMINGTON FOREST	NA	NA	NA	NA
74 RIVER GROVE	Order	Order	NA	NA
75 ROSEMONT/ROLLING GREEN	NA	Order	NA	NA
76 SALT SPRINGS	NA	Order	Order	Order
77 SAMIRA VILLAS	NA	NA	NA	NA
78 SILVER LK EST./WEST SHRS	Order	Order	NA	NA
79 SILVER LAKE OAKS	Order	Order	Order	Order
80 SKYCREST	NA	NA	NA	NA
81 SOUTH FORTY	NA	NA	Not Order	Order
82 SPRING GARDENS	NA	Order	Order	NA
83 STONE MOUNTAIN	NA	Order	NA	NA
84 ST. JOHNS HIGHLANDS	NA	Order	NA	NA
85 SUGAR MILL	Pre-RC to Order	Order	Proposed	Pre-RC Capped
86 SUGARMILL WOODS	Order	Pre-RC Capped	Order	Pre-RC to Order
87 SUNNY HILLS	Pre-RC to Order	Order	Pre-RC to Order	Pre-RC Capped
88 SUNSHINE PARKWAY	Order	Order	Order	Order
89 TROPICAL ISLES	NA	NA	Order	Order
90 TROPICAL PARK	NA	Order	NA	NA
91 UNIVERSITY SHORES	Order	Order/to Not Order	Order	NA
92 VALENCIA TERRACE	NA	Proposed	Proposed	Order
93 VENETIAN VILLAGE	Pre-RC Capped	Order	Order	NA
94 WELAKA/SARATOGA HARBOR	Pre-RC Capped	Order	NA	NA
95 WESTMONT	NA	NA	NA	NA
96 WINDSONG	NA	NA	NA	NA
97 WOODMERE	Pre-RC Capped	ad Pre-RC now NA	Pre-RC Capped	NA
98 WOOTENS	NA	Order	NA	NA
99 ZEPHYR SHORES	NA	Order	Order	Pre-RC Capped

Southern States Utilities, Inc.  
 Schedule of AFPI Stay Request - Alternate  
 Test Year Ended December 31, 1996  
 (LEGEND ON LAST PAGE)

Attachment A

# PLANT NAME	Water		Wastewater	
	Treatment Plant	Transm. & Distrib System	Collection System	Treatment Plant
1 AMELIA ISLAND	NA	Order	Order	NA
2 APACHE SHORES	Order	Order	Order	Order
3 APPLE VALLEY	NA	NA	NA	NA
4 BAY LAKE ESTATES	NA	Order	NA	NA
5 BEACON HILLS	Pre-RC Capped (1)	NA	NA	Pre-RC Capped
6 BEECHER'S POINT	NA	Order	Order	Order
7 BUENAVENTURA LAKES	NA	NA	NA	Order
8 BURNT STORE	Proposed	Pre-RC Capped	Pre-RC Capped	Proposed
9 CARLTON VILLAGE	NA	Order	NA	NA
10 CHULUOTA	Order	Order	Order	Pre-RC/Order Cap
11 CITRUS PARK	NA	NA	NA	NA
12 CITRUS SPRINGS	Order (<Pre-RC)	Pre-RC Capped	Order	Pre-RC Capped
13 CRYSTAL RIVER HIGHLANDS	Order	Order	NA	NA
14 DAETWYLER SHORES	NA	NA	NA	NA
15 DEEP CREEK	NA	Order	Order	NA
16 DELTONA	Pre-RC Capped	Order	Order	Pre-RC Capped
17 DOL RAY MANOR	Order	Order	NA	NA
18 DRUID HILLS	NA	NA	NA	NA
19 EAST LAKE HARRIS ESTATES	NA	NA	NA	NA
20 FERN PARK	NA	NA	NA	NA
21 FERN TERRACE	NA	NA	NA	NA
22 FISHERMAN'S HAVEN	NA	NA	NA	Proposed
23 FLA CENTRAL COMMC PARK	NA	NA	Pre-RC Capped	Propsd/Order Cap
24 FOUNTAINS	Order	Order	NA	NA
25 FOX RUN	NA	NA	NA	NA
26 FRIENDLY CENTER	NA	NA	NA	NA
27 GENEVA LAKE ESTATES	NA	Order	NA	NA
28 GOLDEN TERRACE	NA	NA	NA	NA
29 GOSPEL ISLAND ESTATES	NA	Pre-RC Capped	NA	NA
30 GRAND TERRACE	NA	NA	NA	NA
31 HARMONY HOMES	NA	NA	NA	NA
32 HERMITS COVE	Order	Order	NA	NA
33 HOBBY HILLS	Order	Order	NA	NA
34 HOLIDAY HAVEN	NA	Order	Order	Order
35 HOLIDAY HEIGHTS	NA	NA	NA	NA
36 IMPERIAL MOBILE TERRACE	NA	NA	NA	NA
37 INTERCESSION CITY	NA	Close to Proposed (3)	NA	NA
38 INTERLACH LKS/PARK MANOR	Pre-RC Capped	Order	NA	NA
39 JUNGLE DEN	NA	Order	Order	Order
40 KEYSTONE CLUB ESTATES	Order	Order	NA	NA
41 KEYSTONE HEIGHTS	NA	Pre-RC Capped	NA	NA
42 KINGSWOOD	NA	NA	NA	NA
43 LAKE AJAY ESTATES	NA	NA	NA	NA
44 LAKE BRANTLEY	NA	Not Anything	NA	NA
45 LAKE CONWAY PARK	NA	Order	NA	NA
46 LAKE HARRIET ESTATES	NA	NA	NA	NA
47 LAKESIDE	NA	Order	NA	NA
48 LAKEVIEW VILLAS	NA	NA	NA	NA
49 LEHIGH	Pre-RC Capped	Order	Pre-RC Capped	Pre-RC Capped
50 LEILANI HEIGHTS	NA	NA	NA	NA
51 LEISURE LAKES	NA	Order	Order	Pre-RC Capped
52 MARCO ISLAND	Close to Proposed	Order	NA	Pre-RC-Order Cap
53 MARCO SHORES	Pre-RC Capped	NA	Not Anything	Pre-RC Capped

Southern States Utilities, Inc.  
 Schedule of AFPI Stay Request - Alternate  
 Test Year Ended December 31, 1996  
 (LEGEND ON LAST PAGE)

Attachment A

# PLANT NAME	Water		Wastewater	
	Treatment Plant	Transm. & Distrib System	Collection System	Treatment Plant
54 MARION OAKS	Pre-RC Capped	Pre-RC Capped	Pre-RC Capped	Order (Pres> 2-2000)
55 MEREDITH MANOR	Order	Order	Order	NA
56 MORNINGVIEW	NA	Order	Order	Order
57 OAK FOREST	NA	Order	NA	NA
58 OAKWOOD	NA	NA	NA	NA
59 PALISADES COUNTRY CLUB	NA	Pre-RC Capped	NA	NA
60 PALM PORT	Pre-RC Capped	Pre-RC Capped	Order	Order
61 PALM TERRACE	NA	NA	Order	NA
62 PALM VALLEY	NA	NA	NA	NA
63 PALMS MOBILE HOME PARK	NA	Order	NA	NA
64 PARK MANOR	NA	NA	NA	NA
65 PICCIOLA ISLAND	NA	NA	NA	NA
66 PINE RIDGE	NA	Pre-RC Capped	NA	NA
67 PINE RIDGE ESTATES	Proposed	NA	NA	NA
68 PINEY WOODS	NA	Order	NA	NA
69 POINT O'WOODS	NA	Pre-RC Capped	Order	Pre-RC Capped
70 POMONA PARK	NA	Order	NA	NA
71 POSTMASTER VILLAGE	Order	Order	NA	NA
72 QUAIL RIDGE	NA	Pre-RC Capped	NA	NA
73 REMINGTON FOREST	NA	NA	NA	NA
74 RIVER GROVE	Order	Order	NA	NA
75 ROSEMONT/ROLLING GREEN	NA	Order	NA	NA
76 SALT SPRINGS	NA	Order	Order	Order
77 SAMIRA VILLAS	NA	NA	NA	NA
78 SILVER LK EST./WEST SHRS	Order	Order	NA	NA
79 SILVER LAKE OAKS	Order	Order	Order	Order
80 SKYCREST	NA	NA	NA	NA
81 SOUTH FORTY	NA	NA	Stf Rec/Not Order	Order
82 SPRING GARDENS	NA	Order	Order	NA
83 STONE MOUNTAIN	NA	Order	NA	NA
84 ST. JOHNS HIGHLANDS	NA	Order	NA	NA
85 SUGAR MILL	Pre-RC Capped	Order	Proposed	Pre-RC Capped
86 SUGARMILL WOODS	Order	Pre-RC Capped	Order	Pre-RC Capped
87 SUNNY HILLS	Pre-RC Capped	Order	Pre-RC Capped	Pre-RC Capped
88 SUNSHINE PARKWAY	Order	Order	Order	Order
89 TROPICAL ISLES	NA	NA	Order	Order
90 TROPICAL PARK	NA	Order	NA	NA
91 UNIVERSITY SHORES	Order	Order/ to Not Order	Order	NA
92 VALENCIA TERRACE	NA	Proposed	Proposed	Order
93 VENETIAN VILLAGE	Pre-RC Capped	Order	Order	NA
94 WELAKA/SARATOGA HARBOR	Pre-RC Capped	Order	NA	NA
95 WESTMONT	NA	NA	NA	NA
96 WINDSONG	NA	NA	NA	NA
97 WOODMERE	Pre-RC Capped	Had Pre-RC now NA	Pre-RC Capped	NA
98 WOOTENS	NA	Order	NA	NA
99 ZEPHYR SHORES	NA	Order	Order	Pre-RC Capped

**NOTES**

- (A) Bold Print are the changes from SSU's primary request.
  - (B) Single Boxed Print are charges which staff recommends to not grant a stay, as these rates have been reconsidered by Commission in Order No. PSC-97-0374-FOF-WS and the stay would be moot.
  - (C) Double Boxed Print for Valencia Terrace AFPI charges are not appropriate in the requested categories as there were no non-used and useful amounts in those facilities in the Final Order. Therefore deny stay.
- 
- (1) On its AFPI summary dated 12/18/96 submitted with its tariff approval request, SSU stated that these were proposed not pre-rate case. However, the charges shown were the pre-rate case charges.
  - (2) the pre-rate case tariff was reported under Saratoga Harbor, not Welaka as the utility referred to it in the MFRs.
  - (3) On its AFPI summary dated 12/18/96 submitted with its tariff approval request, SSU stated that these were NA. However, the charges requested were very close but not exactly SSU's proposed AFPI charges for these facilities.

**LEGEND**

- NA - Not Applicable
- Order - Per Final Order
- Pre-RC Capped - Maxed out on Pre RC Tariff
- Proposed - Proposed Per MFRs
- Not Anything -Does Not Match Anything (not in final order, not in proposed & not in pre-rate case tariff)
- Close to Proposed - Close to proposed in MFRs, but differs slightly
- Pre-RC to Order - Switch from pre-rate case to tariff to order when order becomes greater