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October 2, 1995

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HAND DELIVERY

Ms. Blanca S. Bayo, Director
Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Betty Easley Conference Center
Room 110
Tallahassee, Florida 32399-0850

Re: Docket No. 950495-WS

Dear Ms. Bayo:

Enclosed herewith for filing in the above-referenced docket on behalf of Southern States Utilities, Inc. ("SSU") are the original and fifteen copies of SSU's Response in Opposition to Citizens Motion for Appointment of Counsel.

Please acknowledge receipt of these documents by stamping the extra copy of this letter "filed" and returning the same to me.

Thank you for your assistance with this filing.

ACK
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APP _____
CAF _____
CMI _____
CWA KAH/rl

Sincerely,

Kenneth A. Hoffman
Kenneth A. Hoffman

cc: All Parties of Record

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09752 OCT-2 95
FPSC-RECORDS/REPORTING

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, Hernando, High-)
lands, Hillsborough, Lake, Lee,)
Marion, Martin, Nassau, Orange,)
Osceola, Pasco, Polk, Putnam,)
Seminole, St. Johns, St. Lucie)
Volusia and Washington Counties.)
)
)

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FILE COPY

Docket No. 950495-WS

Filed: October 2, 1995

SSU'S RESPONSE IN OPPOSITION TO
CITIZENS MOTION FOR APPOINTMENT OF COUNSEL

Southern States Utilities, Inc. ("SSU"), by and through its undersigned counsel, and pursuant to Rule 25-22.037(2)(b), Florida Administrative Code, hereby files its Response in Opposition to the Citizens Motion for Appointment of Counsel filed by the Office of Public Counsel ("OPC") and states as follows:

1. Based on its acknowledged prior and continuing conflict of interest in the representation of SSU's customers on rate design issues, OPC requests the Commission to compel SSU to pay the reasonable attorneys' fees for representation of customer groups affected by rate design issues in this proceeding. The Commission lacks the statutory authority to grant OPC's request.

2. The Commission possesses only those powers expressly or impliedly granted by statute and any reasonable doubt as to the existence of a particular power being exercised by the Commission must be resolved against the exercise thereof. City of Cape Coral v. GAC Utilities, Inc. of Florida, 281 So.2d 493 (Fla. 1973). In

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FPSC-RECORDS/REPORTING

this case, OPC cites no statutory authority in support of its request. No such authority exists. For this reason alone, OPC's Motion should be denied.

3. SSU has provided numerous Staff-approved notices to customers required under and in conformance with Rule 25-22.0407, Florida Administrative Code, advising customers of the uniform rate structure proposed by SSU in this proceeding. As in the past, customers who wish to be heard at the customer service hearings and/or participate in the technical hearing, with or without counsel, are free to do so.

4. The existence of separate customer classes substantially affected by rate design issues is nothing new to Commission rate cases. OPC has traditionally deferred from advocating positions on rate design issues in prior rate cases, including SSU's rate cases, without raising the prospect of retaining counsel for specific customer groups at the ultimate expense of OPC's own clients.¹ In that respect, this rate proceeding is no different from prior rate proceedings and no basis exists to involuntarily impose additional rate case expense on SSU and, ultimately, its customers.

5. The rationale purporting to support OPC's Motion is fraught with incorrect factual assumptions and infinite prophecies of adverse consequences for SSU's ratepayers. At paragraph 7 of its Motion, OPC states:

¹As part of its Motion, OPC acknowledges that the fees and costs for retaining counsel to represent specific customer groups on rate design issues should be recovered by SSU as prudently incurred rate case expense. See paragraph 9 of OPC's Motion for Appointment of Counsel.

[C]ustomers appear to be aligned into two groups: On the one hand, customers for which the statewide rates cause recovery of more than SSU's stand alone costs; and on the other, customers for whom the state wide rates cause recovery of less than SSU's stand alone costs;

SSU has proposed uniform rates in this proceeding. OPC assumes that all customers whose rates would be lower under a stand alone rate structure oppose uniform rates. There is no basis for that assumption. Thousands of SSU's customers with higher stand alone rates were provided notice and the opportunity to participate in customer service and technical hearings in Docket Nos. 920199-WS and 930880-WS and chose not to object to a uniform rate structure. It is reasonable to assume that some portion of these customers supported uniform rates due to the many benefits of uniform rates confirmed by the Commission in the above-numbered dockets. Simply put, OPC seeks to compel SSU and all of SSU's customers to pay for legal services for a specific group of customers, some of whom may not desire such representation due to their support for a uniform rate structure.

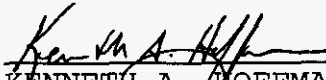
Further, on September 26, 1995, the Commission voted in Docket No. 920199-WS to require SSU to implement a modified stand alone rate structure. If such rates are ultimately implemented by SSU, then there are at least three potential groups which require legal representation under OPC's rationale: (1) customers who support stand-alone rates; (2) customers who support modified stand-alone rates; and (3) customers who support uniform rates. Of course, there may be other customers who support a fourth, fifth or sixth

type of rate structure. OPC's Motion would ultimately require SSU and all of its ratepayers to bear the legal fees and costs of any undetermined number of customer groups supporting a specific rate structure proposal. Such a result is unconscionable and bad public policy. Moreover, OPC's request to open the door to unlimited legal fees and costs would undermine the savings in rate case expense SSU is able to bring to its ratepayers through its consolidated rate case filing.

6. Rate structure is at issue in every proceeding. SSU has informed customers at each service hearing and customer meeting that SSU has proposed uniform rates but that the Commission may determine that another rate structure is more appropriate. SSU also has informed customers that their rates under an alternative rate structure may be higher than the proposed uniform rates. As counsel for the customers, SSU believes that OPC has an obligation to similarly inform the customers of the same possibilities.

WHEREFORE, for the foregoing reasons, SSU respectfully requests that OPC's Motion for Appointment of Counsel be denied.

Respectfully submitted,


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and

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing SSU's Response in Opposition to Citizens Motion for Appointment of Counsel was furnished by U. S. Mail to the following 2nd day of October, 1995:

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