BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

Application for rate increase for Orange-Osceola Utilities, Inc. in Osceola County, and in Bradford, Brevard, Charlotte, Citrus, Clay, Collier, Duval, Highlands, Lake, Lee, Marion, Martin, Nassau, Orange, Osceola, Pasco, Putnam, Seminole, St. Johns, St. Lucie, Volusia, and Washington Counties, by Southern States Utilities, Inc.	DOCKET NO. 950495-WS FILED: November 14, 1996

MOTION FOR RECONSIDERATION OF ORDER NO. PSC-96-1320-FOF-WS

Pursuant to Rule 25-22.038(2), Florida Administrative Code, the Citrus County Board of County Commissioners, Sugarmill Woods Civic Association, Inc., Marco Island Fair Water Defense Fund Committee, Inc., Concerned Citizens of Lehigh Acres, East County Water Control District, Springhill Civic Association, Inc., Hidden Hills Country Club Association, Inc., Citrus Park Homeowners Association and the Harbour Woods Civic Association, by and through their undersigned attorney, move the Florida Public Service Commission ("Commission") for reconsideration of Order No. PSC-96-1320-FOF-WS ("the Final Order"), issued October 30, 1996, The purpose of the reconsideration is to bring to the Commission's attention certain factual errors contained in the Final Order. In support of their motion the Movants state the following:

ACK
AFA 1
APP Smith
CAF
CMU
CTR
EAG
LEG 1
LIN 5
OPC
RCH
SEC 1
WAS
OTH

1. On October 30, 1996, the Florida Public Service Commission published Order No. PSC-96-1320-FOF-WS in the instant docket, granting SSU, among other things, permanent rates for the some 141 water and wastewater systems in 22 counties throughout Florida. The Final Order is a massive document consisting of 1,162 pages of text and attachments.

2. On November 1, 1996, just two days after publication of the Final Order, SSU filed with this Commission its Notice of Appeal seeking judicial review of Order No. PSC-96-1320-FOF-WS in the First District Court of Appeal. SSU's filing of its Notice of Appeal is

usually considered to divest the Commission of most of its jurisdiction with respect to the docket involved.

3. Absent the filing of an "early" Notice of Appeal, parties to Commission proceedings are typically allowed to file motions for reconsideration pursuant to Rule 25-22.038(2), Florida Administrative Code, and thereby give the Commission an opportunity, prior to appeal, to correct any errors within the order. Movants would note that the likelihood of any such errors existing is logically greater in a very lengthy order, as opposed to a shorter order.

4. In order to give the Commission the opportunity to correct the errors Movants believe exist in the Final Order, they have simultaneously filed with the Clerk of the First District Court of Appeal their Motion to Relinquish Jurisdiction To Florida Public Service Commission For Purpose Of Considering Motions for Reconsideration, pursuant to Rule 9.600(b), Florida Rules of Appellate Procedure. (Attachment A).

5. Movants request that the Commission consider correcting, or otherwise clarifying, the amount of revenue SSU is entitled to recover through its rates during each of the first two years of their implementation, which period is intended to incorporate the annual 50 basis point reduction on equity for managerial inefficiency and substandard quality of service versus the annual revenue to be collected through the approved rates after the reduction is removed in the third and subsequent years. Specifically, the following confusing numbers appear in various pages of the Final Order:

Revenue for first 2 years with 50 basis point downward adjustment

	p. 142	p. 206	p. 242	p. 273
Water	$33,389,617	$32,835,742	$32,835,742	$33,389,617
Wastewater	24,701,470	24,553,319	24,553,319	24,701,470
Totals	$58,100,087	$57,389,061	$57,389,061	$58,100,087

Movants would note that the approved annual water revenue, including the equity adjustment, on page 142 is $33,389,617 or some $553,875 greater than the $32,835,742 specified for the same time period on page 206 of the order. Likewise, while the equity adjustment annual revenues for water shown on page 273 agree with the figure shown on page 142, that number is at odds with those on pages 206 and 242. Similar discrepancies exist for the wastewater revenues shown for the 2 year equity adjustment period. In a similar manner, as shown in the table below, the revenues to be allowed after the 2 year equity adjustment period do not appear to be consistent either from page to page or with the 2 year equity adjustment period.

Revenue after 2 years without 50 basis point downward adjustment

	p. 142	p. 206	p. 242	p. 273
Water	$33,645,255	$33,389,617	$33,090,206	?
Wastewater	24,864,844	24,701,470	24,716,690	?
Totals	$58,510,099	$58,100,087	$57,806,896	?

6. With respect to the above tables, the Movants would ask the Commission to either correct or clarify the Final Order so that both the annual revenues to be awarded during the 2 year equity adjustment and after its lapse are clearly and consistently stated. Furthermore, Movants would request that the Commission make clear that the permanent rates approved by the Final Order were, in fact, derived from the appropriate and correct annual revenue requirement figures for both the duration of the equity adjustment and after its lapse. A check of the uniform rates for wastewater shown on Schedule I-B of the August 8, 1996 Staff Recommendation indicates that

these rates appear to be based on revenues of $24,533,319. This is the same revenue as shown in the Final Order on both pages 206 and 242; however, the stand-alone rates shown for the individual wastewater service areas appear to be based on the revenues shown on pages 142 and 273 for the first two years, or on those shown on page 206 for the third and subsequent years. The revenue for each service area based on 10,000 gallons for water and 6,000 gallons for wastewater appear to be representative of the revenue requirement per customer, but fails to depict the service area revenues for the various rate structure options which may vary considerably depending upon the mix of residential and commercial customers. Also, the Final Order should show, but does not, the total revenue subsidies either paid or received by each service area for each of the rate structure options presented to, and considered by, the Commission.

7. Lastly, with respect to the annual revenue figures contained in the tables above, it appears that the water revenue requirements include "other income"and that the wastewater rates are incorrectly stated because they do not, where required, properly reflect "factored gallonage" due to the presence of commercial or general service customers. In this regard, Movants would request that the Commission correct or otherwise clarify the Final Order to (1) state the levels of "other income" so that revenues solely derived from water sales may be calculated and (2) correct each of the tables in the Final Order to reflect the correct wastewater rates for each system after the necessary adjustment for "factored gallonage" is made.

8. With respect to SSU's Palm Valley water system in St. John's County, Movants request that the Commission correct what appears to be an error in the projected annual water sales to be had from that system, as well as the resulting error in the gallonage charge and total

subsidy required for the system from other SSU systems. Specifically, it appears that the Commission failed to recognize that the Palm Valley water system, while under St. Johns County regulatory jurisdiction, had included in the cost of the Base Facility Charge the first 3,000 gallons of consumption for both the residential and commercial classes. Thus, the 1994 water usage at Palm Valley shown on page 1146 of the Final Order of 16,968,340 gallons represents only the historic gallonage in excess of the 3,000 gallons embedded in each customer's monthly consumption. This fact can be ascertained by comparing the total of 16,968,340 gallons shown on page 1146 of the Final Order to the excess gallonage figures for Palm Valley shown in SSU's MFRs, Vol. V-A, Book 1 of 1, page 530, Schedule E2-1. Adding the total embedded gallonage for the first 3,000 gallons of consumption raises the total 1994 consumption from 16,968,340 gallons to 23,624,000 gallons. This figure, in turn, when expanded for annual growth of 1.07 percent, results in total projected 1996 water consumption of 27,047,000 gallons. When the revenue requirement for Palm Valley is divided by the correct gallonage figures it appears that the corrected gallonage charge should be reduced from $9.38 per thousand to $6.05 per thousand gallons. This reduction, in turn, should result in a reduction in the monthly subsidy to each Palm Valley customer from $80.09 to $46.79, which, when multiplied times the 2,548 bills at that system, results in a $84,848 reduction in the total annual subsidy to those customers. Movants would request that the Commission correct the total expected gallonage of sales for 1996 at Palm Valley and adjust the gallonage charge and level of rate subsidy accordingly.

9. Movants would request that the Commission correct the apparent error it made in allowing certain attorneys fees in rate case expense despite an earlier ruling by Chairman Clark that the documentary evidence alleged to support those expenses was to be excluded from the

record for being filed beyond the due date for late-filed exhibits. Specifically, as is discussed at pages 171-172 of the Final Order, SSU was allowed to update its actual rate case expense figures as of March 31, 1996 with a revised estimate to complete contained in late-filed Exhibit No. 255. Subsequently, during the last hours of the hearing, SSU attempted to enter into the record additional estimates and invoices that were identified as Exhibits 257 and 258. Although certain invoices for legal fees from Exhibit 257 were allowed in the record, the bulk of Exhibit 257 and all of Exhibit 258 were ruled inadmissable because filed too late. With respect to expenses claimed by SSU for the instant case, Docket No. 950495, the Commission stated at page 175 of the Final Order:

> The utility reflected an estimate of $200,000 in legal fees for the firm of Rutledge, Ecenia, Underwood, Purnell & Hoffman, P.A. In Exhibit No. 255, SSU reflected the actual amount incurred as of March 31, 1996, to be $117,997. SSU, however, failed to submit an estimate to complete for this firm. While it is also evident that legal fees increased beyond those actually incurred as of March, 1996, there is no basis to ascertain the reasonableness of the remaining estimate to complete. (Emphasis supplied).

However, despite recognizing there was "no basis to ascertain the reasonableness of the remaining estimate", that it was the utility's burden to justify costs, including rate case expense, and that it would "constitute an abuse of discretion to automatically award rate case expense without reference to the prudence of the costs incurred", a simple majority of the Commission went ahead and awarded SSU an additional $57,003 in legal fees for the Rutledge firm solely on the non-specific observation that "a substantial amount of work was performed by this firm as evidenced by attendance at the formal proceedings, exhibits filed, and brief preparation."

10. Movants would suggest to the Commission that Commissioners Deason and Kiesling correctly determined that general observations that a law firm must have performed some level of

work by just being present at a hearing, offering exhibits (recall that utility staff counsel served the same function) and signing a brief are no evidentiary substitute for the billing records and time sheets expected in all other cases and typically relied upon for the record proof that work was claimed to have been accomplished, that it was, in fact, necessary to the case, and that the amount being requested was reasonable. This is especially true when, as recognized by the Final Order, the burden is the utility's and there exists a liberal Commission policy of allowing expense amendments extremely late in the hearing process. Chairman Clark properly excluded from the record billing records that were too late in being offered. Her exclusion of these documents was primarily motivated by the inability of the other parties to examine the expenditures and test their reasonableness and accuracy through cross-examination at such a late date and hour. While the record evidence was rightfully excluded, the customer parties are still completely precluded from testing the accuracy and reasonableness of the additional fees awarded. Stated differently, how can the consumers argue that a law firm's observed presence at hearings is or is not worth an additional $57,000? There is quite simply no evidence in the record of this case to support the award of an additional $57,000 in rate case expense for legal fees awarded to the Rutledge firm. Likewise, there is no record evidence to support the award of tens of thousands of dollars in additional fees, whose sole documentary evidence was excluded in Exhibits 257 and 258. Awarding such substantial fees and costs on such flimsy conclusions is contrary to the very foundation of our administrative law process, which demands that findings of fact must be supported by competent, substantial evidence of record. Movants are confident that all the expenses whose record support disappeared with Exhibits 257 and 258 will be reversed on appeal and would respectfully request that the Commission correct the error itself on this motion for

reconsideration. Even if this unorthodox treatment were to survive appellate review, the Commission should fear the prospect of seeing it offered as precedent for the inclusion of unproven expenses in every future utility case to come before it. Movants would request that the Commission disallow every dollar of legal, travel and other rate case expense not directly supported by competent, substantial evidence accepted into the record in the form of billing records, time sheets and the like.

11. Movants also agree with Commissioners Deason and Kiesling that it was error for the Commission to approve (page 150 of the Final Order) SSU's projected wage increases of 5.75 percent for market equity, merit, licensure, and promotional adjustments, and the utility's additional proposed salary market adjustment of 2.7 percent and would move the Commission to reduce the increase, if any, to a more reasonable level of from two to four percent. In support of this request, Movants would state to the Commission that the Final Order acknowledges a number of deficiencies in SSU's salary study. Specifically, beginning at page 148, the Commission agrees with the Office of Public Counsel's criticism, stating:

> OPC pointed out that SSU has placed a great deal of emphasis of the FLCS survey, however, the utility failed to be aware of and provide all of the relevant data to Hewitt Associates for use in the competitive pay survey. We are also concerned over the exclusion of this data. Although Ms. Lock insisted that the FLCS survey was the single most important data base regarding pay; data for operations and maintenance personnel, SSU excluded a portion of the survey as irrelevant to its analysis.
>
> OPC criticized SSU's failure to include the third volume of the FLCS survey which addressed populations of less than 10,000, because many of the municipalities included in the survey had populations around 2,000 or less. We disagree with the utility's rationale that this volume was less relevant than the information regarding larger populations.
>
> * * *

> When performing a market comparison, it is important to consider not only where employees may go when they leave, but also where new employees are likely to be recruited. Moreover, Ms. Lock stated that averaging together the lowest and highest payers results in an average that is indicative of the overall market. Based on these inconsistencies, the utility's argument against including the third FLCS is not supported.
>
> * * *
>
> Based on the evidence presented in the record, it appears that SSU has experienced a relatively high turnover rate over the last few years. However, we are not convinced that this is indicative of non-competitive salaries, nor that it is a direct result of the level of salaries paid. The utility did not present any evidence to indicate a direct correlation between pay levels and turnover rates.

(Pages 148-149 of Final Order). (Emphasis supplied).

12. Despite acknowledging that "the evidence presented by the utility in support of its salary increases is less than overwhelming", the Commission went ahead and approved the 2.7 percent and 5.75 percent increases. Movants suggest to the Commission that this level of increases is excessive given the clearly recognized deficiencies of SSU's supporting study and OPC's evidence that little, if any, salary increases were warranted. Aside from the general lack of evidence supporting such a large salary increase, Movants would suggest to the Commission that the size of the increase awarded flies in the face of the Commission's conclusion that the utility's management was inefficient in a number of critical aspects and that the overall quality of service provided by the utility was only "marginally satisfactory." Final Order at page 29. Movants would suggest that such large salary increases, despite glaring managerial and quality of service problems, will send this and all other utilities precisely the wrong message about what the standard is for being rewarded for exceptional performance. While the Commission may conclude that some level of salary increase is necessary to prompt SSU to better performance, Movants

would respectfully suggest that the current award is too great and should be substantially reduced on reconsideration as suggested by the votes of Commissioners Deason and Kiesling.

13. Consistent with Commissioner Deason's written dissent at page 267 of the Final Order, Concerned Citizens of Lehigh Acres and the East County Water Control District request that the Commission reconsider its decision not to reflect a negative acquisition adjustment in connection with SSU/TGI's purchase of the Lehigh Acquisition Corporation's assets at Lehigh Acres, including the water and wastewater facilities. As is uncontroverted by the record, this purchase of assets having a book value of $99 million was made for some $40 million, which equals a discount of approximately 60 percent. In SSU's last rate case involving Lehigh, the Commission refused to apply any of the discount to the utility assets based on SSU-supplied evidence in the form of a Raymond James & Associates, Inc. study suggesting that non-utility assets were worth substantially less than even their discounted proportion of the total purchase price. Accepting this logic, the Commission allowed no acquisition adjustment for the utility assets and allowed SSU the full book value of the assets in utility rate base.

14. In the instant case, OPC witness Dismukes presented competent substantial evidence showing that SSU's affiliated tax returns demonstrated that the actual value of the non-utility assets exceeded their discounted proportionate share of the total purchase price. Ms. Dismukes testified that such evidence demonstrated that the Commission's earlier decision to deny a negative acquisition adjustment was based on factually inaccurate data or that the facts changed dramatically at about the time the decision was made. Ms. Dismukes and OPC argued that such changed factual circumstances warranted a $3,873,763 negative acquisition adjustment to Lehigh's rate base. Movants, Concerned Citizens of Lehigh Acres and the East County Water

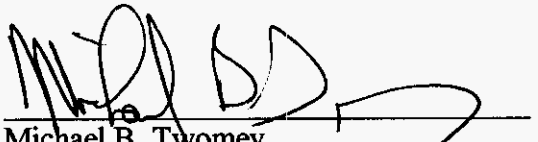
Control District concur with both OPC's conclusion that a negative acquisition adjustment is warranted and with Commissioner Deason's dissent stating that the burden of justifying why actual investment should not be used as the rate base should be squarely placed on the utility, especially where, as here, the rate structure results in the "non-existent investment" being passed "along to other customers who had no standing or conceivable interest in whatever proceeding where the non-investment was given recognition." Final Order at page 267. Movants would respectfully request that the Commission revisit the issue of a negative acquisition adjustment at Lehigh, as well as Deltona, where non-existent rate base or investment is, likewise, being carried by virtually all SSU customers through the subsidies inherent in the approved rate structure.

15. Movant, Marco Island Fair Water Defense Fund Committee, moves this Commission to reconsider its determination that the Collier Property should be classified fully as rate base and not non-utility or property held for future use. Final Order at pages 39-40. Movant believes that this decision to allocate all 212 acres of the Collier Property to utility rate base is contrary to the evidence presented by the staff auditor Robert Dodrill who raised "valid concerns" in his recommendation that major portions of the land should be classified to non-utility since it was not required for present utility purposes as a water source. OPC was in accord with the staff auditor and argued that the land was not all necessary so that a portion of the land should be allocated to non-utility either on the direct acreage method or the lump sum purchase method. That the Commission should reduce rate base to more accurately reflect the actual land necessary for water production is bolstered by the Commission's recognition that SSU's position was not fully supported by the DEP setback (page 39) and by the Commission's further recognition (page 40) that the non-development status of the land could affect that portion left in rate base. This

decision admits that not all of the land is necessary for utility related water production and places the investment to be carried by utility customers while SSU might otherwise decide to later develop it. The Commission should either classify the excess land as non-utility as testified to by its own auditor, or, at worst, place the excess land in land held for future use.

WHEREFORE, the Movants would respectfully request that the Florida Public Service Commission grant their Motion to Reconsider Order No. PSC-96-1320-FOF-WS and make the corrections and clarifications requested therein.

Respectfully submitted,



Michael B. Twomey
Attorney for the Citrus County Board of County Commissioners, Sugarmill Woods Civic Association, Inc., Marco Island Fair Water Defense Fund Committee, Inc., Concerned Citizens of Lehigh Acres, East County Water Control District, Springhill Civic Association, Inc., Hidden Hills Country Club Association, Inc., Citrus Park Homeowners Association and the Harbour Woods Civic Association

(904) 421-9530

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and accurate copy of the foregoing has been furnished by U.S. Mail this 14th day of November, 1996 to the following persons:

Brian Armstrong, Esquire
General Counsel
Southern States Utilities, Inc.
1000 Color Place
Apopka, Florida 32703

Kenneth A. Hoffman, Esquire
Rutledge, Ecenia, Underwood,
Purnell & Hoffman, P.A.
Post Office Box 551
Tallahassee, Florida 32302

Lila A. Jaber, Esquire
Division of Legal Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0862

Charles J. Beck, Esquire
Harold McLean, Esquire
Office of the Public Counsel
c/o The Florida Legislature
111 West Madison Street, Suite 812
Tallahassee, Florida 32399-1400

Larry M. Haag, Esquire
111 West Main Street
Suite #B
Inverness, Florida 33450

Joseph A. McGlothlin, Esquire
Vicki Gordon Kaufman, Esquire
117 S. Gadsden Street
Tallahassee, Florida 32310

Darol H. N. Carr, Esquire
David Holmes, Esquire
Farr, Farr, Emerich, Sifrit,
Hackett & Carr, P.A.
Post Office Drawer 2159
Port Charlotte, Florida 33949

Arthur I. Jacobs, Esquire
Post Office Box 1110
Fernandina Beach, Florida 32305-1110

Attorney

IN THE DISTRICT COURT OF APPEAL
IN AND FOR THE STATE OF FLORIDA
FIRST DISTRICT

SOUTHERN STATES UTILITIES, INC
Appellant,

vs. Case No. 96-04227

FLORIDA PUBLIC SERVICE COMMISSION, PSC NO. 950495-WS

Appellee.
_____/

MOTION TO RELINQUISH JURISDICTION TO FLORIDA PUBLIC SERVICE COMMISSION FOR PURPOSE OF CONSIDERING MOTIONS FOR RECONSIDERATION

Pursuant to Rule 9.600(b), Florida Rules of Appellate Procedure, the Citrus County Board of County Commissioners, Sugarmill Woods Civic Association, Inc., Marco Island Fair Water Defense Fund Committee, Inc., Concerned Citizens of Lehigh Acres, East County Water Control District, Springhill Civic Association, Inc., Hidden Hills Country Club Association, Inc., Citrus Park Homeowners Association and the Harbour Woods Civic Association ("Movants") by and through their undersigned attorney, move this Court to temporarily relinquish jurisdiction of this case to the Florida Public Service Commission limited purpose of allowing it to hear motions for reconsideration of the Final Order published on October 30, 1996, but which order was appealed to this Court by Southern States Utilities, Inc. ("SSU") two days later on November 1, 1996. In support of this Motion, Movants state the following:

1. On November 1, 1996, SSU filed its Notice of Appeal with the Florida Public Service Commission ("Commission") seeking appeal with this Court of the Commission's Final Order published in Docket No. 950495-WS, a Commission proceeding addressing a SSU water and

wastewater rate increase case. The Final Order appealed, PSC-96-1320-FOF-WS is a massive 1,162 page order, which Final Order was attached to SSU's Notice of Appeal, also filed with this Court.

2. Rule 25-22.038(2), Florida Administrative Code, allows parties to Commission proceedings to file motions for reconsideration with the Commission within 15 days of the publication of final agency order. The purpose of reconsideration is to allow the Commission an opportunity to correct any legal or factual errors in the final order prior to appeal.

3. As stated above, SSU filed its notice of appeal of the Final Order in question and, thus, divested the Commission of continuing jurisdiction to hear motions for reconsideration. The Movants believe that there are a number of clear errors in this 1,162 page order and have attempted to point those errors out to the Commission in their Motion for Reconsideration of Order No. PSC-96-1320-FOF-WS, dated November 14, 1996, a copy of which is attached as Attachment A.

4. Movants are of the belief that the Commission, the parties, and, ultimately, this Court can benefit by the Commission having an opportunity to reconsider its lengthy Final Order prior to this Court reviewing it on appeal.

5. Rule 9.600(b), Florida Rules of Appellate Procedure, provides:

> (b) Further Proceedings. If the jurisdiction of the lower tribunal has been divested by an appeal from a final order, the court by order may permit the lower tribunal to proceed with specifically stated matters during the pendency of the appeal.

Pursuant to the above Rule, Movants would respectfully request that this Court issue its order providing the Commission with jurisdiction over the instant case for the specific purpose of hearing

motions for reconsideration of the Final Order as would normally be allowed pursuant to Rule 25-22.038(2), Florida Administrative Code.

6. Movants would also request that the Court state in its order that the time for filing cross notices of appeals, the filing of appellate briefs, and other matters pursuant to the Florida Rules of Appellate Procedure shall be tolled until such time as the Commission publishes its order ruling on the motions for reconsideration.

Respectfully submitted,

/s/ Michael B. Twomey
Michael B. Twomey
Florida Bar No. 234354
Post Office Box 5256
Tallahassee, Florida 32314-5256
(904) 421-9530

Attorney for Movants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and accurate copy of the foregoing has been furnished by U.S. Mail this 14th day of November, 1996 to the following persons:

Brian Armstrong, Esquire
General Counsel
Southern States Utilities, Inc.
1000 Color Place
Apopka, Florida 32703

Kenneth A. Hoffman, Esquire
Rutledge, Ecenia, Underwood,
Purnell & Hoffman, P.A.
Post Office Box 551
Tallahassee, Florida 32302

Lila A. Jaber, Esquire
Division of Legal Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0862

Charles J. Beck, Esquire
Harold McLean, Esquire
Office of the Public Counsel
c/o The Florida Legislature
111 West Madison Street, Suite 812
Tallahassee, Florida 32399-1400

Larry M. Haag, Esquire
111 West Main Street
Suite #B
Inverness, Florida 33450

Joseph A. McGlothlin, Esquire
Vicki Gordon Kaufman, Esquire
117 S. Gadsden Street
Tallahassee, Florida 32310

Darol H. N. Carr, Esquire
David Holmes, Esquire
Farr, Farr, Emerich, Sifrit,
Hackett & Carr, P.A.
Post Office Drawer 2159
Port Charlotte, Florida 33949

Arthur I. Jacobs, Esquire
Post Office Box 1110
Fernandina Beach, Florida 32305-1110

/s/ Michael B. Twomey
Attorney