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December 9, 1996

Blanca S. Bayo, Director
Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

Re: Case No. 950495-WS

Dear Ms. Bayo:

Enclosed for filing in the above-referenced docket are the original and 15 copies of Citizens' Response and Opposition to Southern States' Cross-Motion for Reconsideration. A diskette in WordPerfect 6.1 is also submitted.

Please indicate the time and date of receipt on the enclosed duplicate of this letter and return it to our office.

Sincerely,

Charles J. Beck
Deputy Public Counsel

- ACK
- AFA
- APP CJB:bsr
- CAF
- CMU Enclosure
- CTR
- EAG
- LEG 2
- LIN 5
- OPC
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DOCUMENT NUMBER-DATE

13082 DEC-9 96

FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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In re: Application for a 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: December 9, 1996

CITIZENS' RESPONSE AND OPPOSITION TO SOUTHERN STATES' CROSS-MOTION FOR RECONSIDERATION

The Citizens of Florida ("Citizens"), by and through Jack Shreve, Public Counsel, file this response and opposition to the cross-motion for reconsideration filed by Southern States Utilities, Inc. ("Southern States") on November 26, 1996.

Southern States Waived the Issue Presented in its Cross-Motion

1. Southern States asks the Commission to reconsider an issue that Southern States didn't even address in its brief. Rule 25-22.056(3)(a), Florida Administrative Code, states the following:

Post-hearing Filings

... (3)(a) Each party to a proceeding shall file a post-hearing statement of issues and positions which shall include a summary of each position of no more than 50 words, set off with asterisks. If a party's position has not changed since the issuance of the prehearing order, the party's post-hearing statement may simply restate the prehearing position; however, if the prehearing position is longer than 50 words it must be reduced to no more than 50 words. The 50-word limit may be modified for good cause shown. In the event that a new issue is identified by a party in a post-hearing statement, that new issue shall be clearly identified as such, and a statement of position thereon shall be included. **Any issue or position not included in a post-hearing statement shall be considered waived.** (Emphasis added).

The Commission's final order recognized Southern States' failure to address the issue concerning the reduction of common equity in its capital structure necessitated by the refund ordered by the Commission in docket 920199-WS. The final order in this case order states that "Southern States offered no argument in its brief regarding this specific adjustment." Order No. P.C.-96-1320-FOF-WS issued October 30, 1996, at 115.

2. Southern States cannot now complain about an adjustment made by the Commission on a matter that Southern States failed to address in its brief. It has waived the issue.

On Reconsideration, the Commission Did Not Change its Order Requiring a Refund

3. Southern States complains that the adjustment to common equity required by the Commission's refund order is based solely on the refund ordered by the Commission in its October 19, 1995 order in docket 920199-WS. Southern States cross-motion at 5. However, the Commission's decision to require a refund by Southern States remains unchanged from the October 19, 1995 order to the present. After reconsidering its order as requested by Southern States, and then reconsidering the order again on its own motion, the Commission consistently adhered to its decision to require a refund by Southern States.

4. In effect, Southern States wants the Commission to repudiate its refund order for the purpose of determining the capital structure in this case because Southern States appealed the Commission's order. Granting a stay of the order, however, isn't a reversal of the order. The Commission's refund order still stands; only the execution of the refund is postponed pending review by the First District Court of Appeal. The Commission was correct in making an adjustment to the capital structure of Southern States that reflects the Commission's refund order.

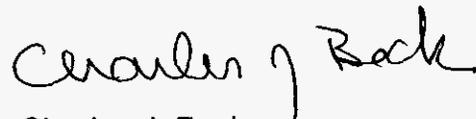
The First District Court of Appeal Has Not Yet Relinquished Jurisdiction to the Commission to Consider Southern States' Cross-Motion

5. On December 2, 1996, the First District Court of Appeal issued an order abating Southern States' appeal pending the Commission's disposition of the motion for reconsideration filed by Citrus County *et. al.* on November 14, 1996. On December 3, 1996, Southern States moved for clarification of the Court's order, and on December 4, 1996, the Citizens moved for reconsideration and clarification. The Court may broaden its relinquishment of jurisdiction after considering these motions. As it stands now, however, the Commission only has jurisdiction to entertain the motion for reconsideration filed by Citrus County. If the Court does not change its order, the Commission will have no jurisdiction to consider Southern States' cross-motion.

WHEREFORE, the Citizens request the Commission to deny Southern States' motion for reconsideration.

Respectfully submitted,

JACK SHREVE
Public Counsel



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Attorneys for the Citizens
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**CERTIFICATE OF SERVICE
DOCKET NO. 950495-WS**

I HEREBY CERTIFY that a correct copy of the foregoing has been furnished by U.S. Mail or *hand-delivery to the following party representatives on this 9th day of December, 1996.

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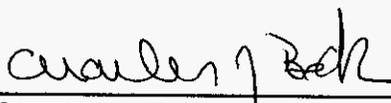
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