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REPLY TO: Tallahassee

July 22, 1993

Mr. Steve Tribble, Director  
Division of Records and Reporting  
Florida Public Service Commission  
101 East Gaines Street  
Tallahassee, Florida 32399-0850

HAND DELIVERY

Re: Docket No. **930647-WS**

Dear Mr. Tribble:

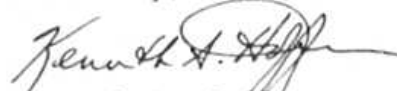
Enclosed for filing in the above-referenced docket are the following documents:

- (1) Original and fifteen copies of Southern States' Motion to Dismiss Joint Petition; and,
- (2) A disk in Word Perfect 5.1 containing a copy of the motion entitled "Giga.Full."

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.

Sincerely,

  
Kenneth A. Hoffman

1 W/M  
6 KAH/rl  
Enclosures

DOCUMENT NUMBER-DATE  
07933 JUL 22 93

100-100-100000-100

For Certain Systems Operated by Southern States Utilities, Inc. ("Joint Petition"). Essentially, the Joint Petition seeks a full Commission review of the statewide uniform rates ordered by the Commission pursuant to Order No. PSC-93-0423-FOF-WS issued in Docket No. 920199-WS for the Southern States' systems at issue in Docket No. 920199-WS. Motions for reconsideration filed by Citrus County and COVA requesting the Commission to recede from its decision approving uniform statewide rates and to "authorize the collection of stand-alone rates on a system-by-system basis"<sup>1</sup> in Docket No. 920199-WS were denied by the Commission at the July 20, 1993 Agenda Conference.

2. As an initial matter, the Joint Petition should be denied because it fails to comply with the minimum initial petition requirements set forth in Rule 25-22.036(7), Florida Administrative Code. Specifically:

a. the Joint Petition fails to provide the address of any and each of the Joint Petitioners;

b. the Joint Petition fails to provide any explanation of how the substantial interests of petitioners Citrus County, Hernando County, COVA or Brown-Waite will be or are affected by the requested Commission determination;

c. the Joint Petition fails to provide any statement of all known disputed issues of material fact, or if none, a statement to that effect;

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<sup>1</sup>See Citrus County's Motion for Reconsideration filed April 6, 1993 in Docket No. 920199-WS.

d. the Joint Petition fails to provide a concise statement of the ultimate facts alleged; and,

e. the Joint Petition fails to identify the rules and statutes which entitle the Joint Petitioners to relief. Accordingly, the Joint Petition should be dismissed on procedural grounds.

3. The Commission should dismiss the Joint Petition with prejudice in recognition of what it is -- a thinly disguised request for further reconsideration of Order No. PSC-93-0423-FOF-WS, confirmed on reconsideration, in Docket No. 920199-WS. The Joint Petition, except for the first paragraph which requests full Commissioner participation, is devoted to challenging the alleged unlawfulness of uniform statewide rates (paragraph 2), the purported lack of Commission legal authority for uniform statewide rates (paragraph 3)<sup>2</sup>, the claimed deficiencies and consequences of the alleged lack of notice for uniform statewide rates (paragraphs 4 and 6), the claimed adverse economic impact of statewide rates on some customers (paragraph 5), and the alleged lack of competent substantial evidence for uniform statewide rates (paragraph 7) -- all of which are matters addressed and disposed of as final agency action in Docket No. 920199-WS. In Austin Tupler Trucking, Inc. v. Hawkins, 377 So.2d 679, 681 (Fla. 1979), the Florida Supreme Court confirmed the long-standing legal principle that "there must be a terminal point in every proceeding both administrative and

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<sup>2</sup>Paragraph numbers identified in this Motion reflect a renumbering of the Joint Petition's numbered paragraphs to proper numerical order.

judicial, at which the parties and the public may rely on a decision as being final and dispositive of the rights and issues involved therein." Consequently, the Commission's rules do not authorize a petition for reconsideration of an order disposing of a motion for reconsideration or petitions for further reconsideration, and any such efforts should be denied as procedurally improper. See Rule 25-22.060(1)(a), Florida Administrative Code; 89 FPSC Rep. 10:147, 150, Order No. 22022, (Oct. 9, 1989). The legal prohibition against seeking reconsideration of orders resolving motions for reconsideration should not be brushed aside simply because a petitioner chooses to entitle a pleading as a "Joint Petition" rather than using a title reflecting the true substance of the requested relief. Given the status of the proceedings in Docket No. 920199-WS to date and the substance of the Joint Petition, the Joint Petitioners' request for collateral reconsideration through a petition to open a new docket conflicts with Commission Rule 25-22.060(1)() and Commission and judicial precedents. Accordingly, the Joint Petition should be dismissed.

4. The Joint Petition also seeks full Commission review of the Commission's decision in Docket No. 920199-WS approving uniform statewide rates. The request for full Commission assignment should be denied. In Docket No. 920199-WS, the Office of Public Counsel ("OPC") filed a Petition for Full Commission Assignment to hear and decide all issues, including rate design issues, in Docket No. 920199-WS. That petition was denied pursuant to Order No. PSC-92-

1020-FOF-WS issued September 21, 1992 in Docket No. 920199-WS.<sup>3</sup>

5. Substantively, if the Commission chooses to consider the Joint Petition on its own merits, the Commission must still deny the Joint Petition as it fails to present a prima facie case of changed facts and circumstances substantiating a claim under Chapter 367 that the uniform statewide rates are unjust, unreasonable, non-compensatory, or unfairly discriminatory. Based on the finality of the decision in Docket No. 920199-WS, the Commission has the authority to modify or withdraw the order on reconsideration (once issued) to implement a new rate structure only:

after proper notice and hearing, and upon a specific finding based on adequate proof that such modification or withdrawal of approval is necessary in the public interest because of changed conditions or other circumstances not present in the proceedings which led to the order being modified. [Emphasis supplied.]

Peoples Gas Systems, Inc. v. Mason, 187 So.2d 335, 339 (Fla. 1966). See also, Austin Tupler Trucking, Inc. v. Hawkins, supra, at 681. However, on its face, the Joint Petition fails to present any allegations of changed facts or circumstances that were not present or considered in Docket No. 920199-WS. Reading the content of the allegations in paragraphs 2 through 7 in the light most favorable to the Joint Petitioners' position, each of the points presented have already been made, considered, and disposed of in Docket No. 920199-WS either in the initial Final Order or on reconsideration.

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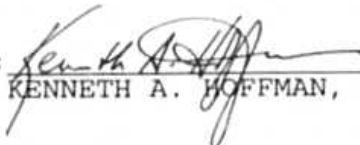
<sup>3</sup>OPC did not seek reconsideration of Order No. PSC-92-1020-FOF-WS.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Southern States' Motion to Dismiss Joint Petition was furnished by U. S. Mail, this 22nd day of July, 1993, to the following:

Catherine Bedell, Esq.  
Florida Public Service Commission  
Division of Legal Services  
101 East Gaines Street  
Room 226  
Tallahassee, Florida 32399

Michael B. Twomey, Esq.  
Assistant Attorney General  
Department of Legal Affairs  
Room PL-01, The Capitol  
Tallahassee, FL 32399-1050

By:   
KENNETH A. HOFFMAN, ESQ.

DATE July 22 1993  
TO Michael B. Twomey

The attached is sent to you for:

- Your Information
- Further Handling
- Necessary Action
- Advice on Handling
- Response

Remarks: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Division of Records & Reporting \_\_\_\_\_  
PSC/R&R (6/92)