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October 16, 1995

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 following documents:

1. Original and fifteen copies of SSU's Response to Citizens' Motion for Reconsideration by the Full Commission and Suggestion for Expedited Disposition; and

2. A disk in Word Perfect 6.0 containing a copy of the document entitled "OPC-MOT8.RSP."

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

KAH/rl

cc: All Parties of Record

ACK ✓
AFA 3
APP
CAF
CMU
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OPC 4
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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application by Southern States Utilities, Inc. for rate increase and increase in service availability charges for 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.	)	Docket No. 950495-WS Filed: October 16, 1995

SSU'S RESPONSE TO CITIZENS' MOTION FOR RECONSIDERATION BY THE FULL COMMISSION AND SUGGESTION FOR EXPEDITED DISPOSITION

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 this Response to the Citizens' Motion for Reconsideration by the Full Commission (the "Motion") filed by the Office of Public Counsel ("OPC") on October 9, 1995. In its Motion, OPC requests that the full Commission reconsider aspects of Order No. PSC-95-1208-PCO-WS (the "Order Establishing Procedure"), signed by Commissioner Diane K. Kiesling as Prehearing Officer and issued September 29, 1995. In support of this Response, SSU states as follows:

Introduction

1. In an ambiguous fashion, OPC complains of three issues which OPC believes appropriate for the Commission to remedy on reconsideration of the Order Establishing Procedure, specifically (1) the service hearing schedule, (2) the due date for OPC's filing testimony, and (3) limitations on discovery. As an initial matter,

SSU maintains that it would be procedurally inappropriate for the Commission to address any of these matters on a motion for reconsideration of the Order Establishing Procedure. In the event the Commission looks past the procedural flaws in OPC's Motion, SSU addresses OPC's substantive arguments on these issues, specifically focusing on the noticing and service hearing question. At the end of this Response, SSU makes a suggestion for expedited disposition of OPC's Motion.

Procedural Arguments

2. OPC's arguments respecting the service hearing schedule in the Order Establishing Procedure should be stricken. The Commission should take note that the Order Establishing Procedure merely incorporates the service hearing schedule previously established by Order No. PSC-95-1042-PCO-WS, issued August 21, 1995 ("Third Order On Service Hearing Schedule"), without making a change thereto. Thus, OPC's Motion should be considered an untimely motion for reconsideration of the Third Order On Service Hearing Schedule, rather than a timely motion for reconsideration of the Order Establishing Procedure.

3. Furthermore, OPC in this Motion makes the same substantive arguments regarding allegedly deficient notices it made in more skeletal form in its Third Motion to Dismiss filed September 6, 1995, and in its Motion to Cap Rates filed September 15, 1995. SSU filed a response to OPC's Third Motion to Dismiss on September 15, 1995, and a response to OPC's Motion to Cap Rates on September 22, 1995. An amended pleading should not be allowed

after a responsive pleading is filed without the permission of the presiding officer.[1] OPC has not sought, and does not in the instant Motion seek, the permission of the presiding officer to amend its prior filings. The Commission voted on October 6 to deny OPC's Motion to Cap Rates as to interim rates, and disposition of OPC's Third Motion to Dismiss is pending. Although OPC now requests a different remedy for the same alleged noticing flaw complained of in the aforesaid prior motions -- the rescheduling of service hearings upon renoticing as opposed to outright dismissal of SSU's case -- SSU maintains that the portion of the instant Motion addressing the service hearing schedule should nonetheless be stricken as an impermissible amendment of a prior pleading and as a repetitious, cumulative pleading. Even though SSU's noticing complied with all legal requirements, SSU's September 15 response to OPC's Third Motion to Dismiss proposed renoticing and a rescheduling of service hearings within the eight-month statutory time period if the Commission was concerned with the sufficiency of SSU's noticing. Now, some three weeks after the aforesaid SSU response and several days after the Commission's denying OPC's Motion to Cap, OPC not only seeks to embellish its undiscerning reference to the law in its prior motions, but OPC also has changed its mind as to the remedy suited for its complaint. Striking the aforesaid portion of OPC's Motion is, in accordance with the above, clearly warranted.

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[1] See Rule 25-22.036(8), Florida Administrative Code, Rule 1.190, Fla. R. Civ. P.

4. OPC suggests that the Order Establishing Procedure implicitly denies several pending OPC motions for an extension of the due date for OPC's filing testimony. There is no reasonable basis for OPC's suggestion. Prior to issuance of the Order Establishing Procedure, the due dates for filing testimony were previously only noted on the Case Assignment and Scheduling Record ("CASR"). Commission practice is for such due dates to be placed in the Order Establishing Procedure, as the CASR is not a formal order of the Commission. The Order Establishing Procedure's formal establishment of those dates was a matter of routine to which OPC is surely accustomed. Rather than making a phone call or writing a letter to confirm a stipulation as to this routine, OPC prefers to file another nettlesome motion at ratepayer expense. Notably, after OPC filed the instant Motion, the Prehearing Officer's intent to deal in due course with OPC's pending motions to extend the testimony due date became obvious with the issuance of Order No. PSC-95-1258-PCO-WS, issued October 13, 1995, denying the first two of OPC's eight such motions. Therefore, in consideration of the above, OPC's Motion with respect to the due date for its testimony is moot and unnecessary as to the Order Establishing Procedure and premature as to impending Prehearing Officer rulings on outstanding OPC motions. As such, this portion of OPC's Motion should also be stricken.

5. OPC inexplicably complains of numerical restrictions on discovery in its Motion, when the Order Establishing Procedure expressly states,

> The procedures governing discovery have been previously established by Order No. PSC-95-0943-PCO-WS, issued August 4, 1995. That order on discovery shall govern in this docket.

Order Establishing Procedure at p. 1. The Order Establishing Procedure makes no modification to Order No. PSC-95-0943-PCO-WS and merely reminds the parties of said order. The time for reconsideration of Order No. PSC-95-0943-PCO-WS has long passed, so OPC's request in the instant Motion must be stricken as untimely.

Substantive Arguments

6. SSU maintains that the procedural deficiencies in OPC's Motion are fatal, particularly as to the due date for OPC's filing testimony and the limitations on discovery. If, however, the Commission considers the substantive arguments in OPC's Motion, SSU responds as follows.

7. OPC's Motion should be rejected because it utterly fails to meet the applicable standard for granting reconsideration. E.g. Diamond Cab Co. of Miami v. King, 146 So.2d 889 (Fla. 1962). For the sake of brevity, SSU focuses on OPC's contentions as to noticing. Suffice to say that OPC makes little effort to identify or establish a mistake of fact or law made by the Prehearing Officer and does not raise any arguments OPC has not made in any of its previous motions with regard to either the due date for OPC's testimony and limitations on discovery.

8. The arguments OPC makes in this Motion as to the noticing issue attempt to bolster the nebulous claims contained in OPC's Third Motion to Dismiss by citing inapposite authority and stretching the envelope in an attempt to distinguish

indistinguishable authority. For the most part, the presentation of SSU's arguments in rebuttal appearing below follows the sequence of OPC's assertions in its Motion.

9. SSU's notices[2] have no "deficiencies," as OPC claims. Motion at p. 2. Every notice SSU has disseminated to its customers in this docket comport with the form and content requirements of the Commission's rules, Rules 24-22.0407(5)(b) and (6)(a), Florida Administrative Code, and have been approved by the Commission staff in accordance with Rules 24-22.0407(5)(b) and (6)(a), Florida Administrative Code. In its Motion, OPC does not and cannot dispute SSU compliance with these rule requirements.

10. SSU is unaware of any member of the Commission publicly "representing ... that new service hearings would be held" as a result of the noticing complaint OPC makes in this Motion. Motion at p. 2. SSU is only aware that several Commissioners have indicated that new service hearings are **possible**.

11. In addition to ignoring the applicable law regarding noticing (discussed further below), OPC slights or slants a number of salient facts in its Motion and, therefore, makes a number of faulty conclusions.

a. The opinion of the First District Court of Appeal (the "DCA") reversing the Commission's uniform rate decision was rendered June 27, 1995, when the court modified its original

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[2] OPC does not specify which notice(s) it believes "deficient." Therefore, SSU and the Commission are left to guess whether OPC complains of the service hearing notices, the initial customer notice, the synopsis, the distributed MFRs or some combination thereof.

opinion on rehearing. OPC suggests the opinion was effective as of April 6, 1995. Motion at p. 2. This is not accurate, since DCA opinions are not effective until rehearing is resolved and the mandate issued. The DCA issued its mandate to the Commission on July 13, 1995. The Florida Supreme Court has yet to rule on SSU's pending request to review the DCA's decision.

b. SSU originally filed the present rate case on June 28, 1995. The official date of filing for this case is August 2, 1995. Not until September 12, 1995, did the Commission take initial action in response to the DCA's July 13 mandate by voting not to reopen the record in Docket No. 920199-WS for the purpose of taking further evidence on uniform rates. Not until September 26, 1995 -- more than 2 months after the DCA's mandate issued -- did the Commission vote to change SSU's rate structure from uniform rates to modified stand alone rates. Both of these Commission votes occurred long after SSU filed this case, and the latter vote occurred after the deadline for SSU to mail the initial customer notice in accordance with Rule 24-22.0407(5)(a), Florida Administrative Code.

c. The aforesaid recent Commission votes have not yet been reduced to writing, are subject to reconsideration, appeal and applicable stay provisions, and, quite possibly, may never be implemented. Even as of this writing, uniform rates are in effect and are SSU's lawfully approved rates.

d. Further, by Order No. PSC-95-0894-FOF-WS, issued June 21, 1995 (the "Jurisdiction Order") the Commission found that SSU's

plants and land throughout the state constituted a single utility system, thereby supplying the prerequisite the DCA identified for approval of uniform rates.[3] SSU has supplied sufficient evidence in this case for the Commission to repeat its single utility system finding and to maintain the uniform rate structure which the Commission has now twice approved.

e. In consideration of the above, what SSU "knew" about the status of the uniform rate structure at the time the notices were issued was that uniform rates were more likely than not to be SSU's rates in the foreseeable future.

f. The DCA opinion reversing the Commission's uniform rates decision also rejected OPC's position that the Commission must include the gain on the sale of utility assets SSU's revenue requirement. OPC does not complain that SSU has failed to disclose that aspect of the DCA's opinion to the customers despite that decision's import being ever more so certain than the future of

[3] The County parties to Docket No. 930945-WS filed notices of appeal to the Jurisdiction Order. Those notices serve to stay the Jurisdiction Order pursuant to Rule 9.310(b)(2) of the Florida Rules of Appellate Procedure. However, "[a] supersedeas on appeal from a final judgment stays the execution but does not undo the performance of the judgment." City of Plant City v. Mann, 400 So.2d 952, 953 (Fla. 1981) (citations omitted). "Being preventive in its effect the stay does not undo or set aside what the trial court has adjudicated, it merely suspends the order." Id. at 954 (citations omitted). Thus, the single utility system finding the DCA established as a prerequisite for uniform rates survives the suspension of the Jurisdiction Order. It survives because to rule otherwise would have the unwarranted effect of setting aside the single system finding when implementation of uniform rates does not affect the subject matter on appeal in Docket No. 930945-WS.

uniform rates.[4] Yet, at the service hearings in this docket, OPC has actively worked to create the impression in the customers' minds that the DCA never decided this issue against OPC. SSU likewise has not informed the customers that the Commission has several times denied OPC's demand to apply acquisition adjustments to the rate bases of the former Deltona Utilities, Inc. and Lehigh Utilities, Inc. plants because the acquisitions of those plants were by stock purchase.[5] And yet again, at the service hearings in this docket, OPC has worked to create the impression those precedents do not exist. Stated directly, then, OPC holds SSU to a different standard of providing adequate information than the standard OPC would have applied to itself.

12. Plant-by-plant financial, revenue, and rate information is not required by the Commission's rules. As a matter of law, the Commission accepted SSU's filing as being in complete compliance with its rules as of August 2, 1995. The Commission should recall the efficiencies it recognized with the consolidation of SSU's operations, rates, regulatory status, tariffs, reporting requirements, MFRs, etc. See Order No. PSC-91-0423-FOF-WS, issued

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[4] OPC has not sought Florida Supreme Court review of the DCA's decision.

[5] To SSU's knowledge, the Commission never has applied an acquisition adjustment to the rate base of a utility acquired by stock purchase and has consistently and emphatically held that a stock acquisition does not alter the rate base of the acquired utility. See, e.g., In Re: Application for transfer of majority organizational control of Certificate No. 379-S issued to Alafaya Utilities, Inc. in Seminole County to Utilities, Inc., Order No. PSC-95-0489-FOF-SU issued April 18, 1995.

March 22, 1995, in Docket No. 920199-WS, at p. 95.[6] The MFR volumes SSU already has filed with the Commission and distributed to local county libraries and SSU customer service offices are some fifty in number. By its Motion, OPC would have the Commission cast aside the efficiencies recognized by consolidation, expand the MFR requirements by a post-filing order in a manner not required by any pre-filing order or by rule, and add at least another 50 volumes to the burden already placed on MFR custodians. Such action by the Commission would represent a complete reversal of the direction the Commission has pointed SSU in since 1990. The Commission should also recall that when plant-by-plant information was in the MFRs filed in Docket No. 920199-WS, OPC complained of that too. Obviously, OPC's desired interpretation of reputed filing requirements evolve to best suit OPC's purposes, in complete disregard of the chaos which would result if the Commission acceded to OPC's manipulations. Moreover, OPC, staff, and the intervenors in this case all have sufficient plant-by-plant information in the MFRs filed on June 28 to calculate "stand alone" rates for interim rate purposes and, in addition, have been provided the plant-by-plant workpapers SSU prepared prior to its filing. OPC has had these workpapers since September 1, 1995, and SSU provided OPC with SSU's customer list by mail on September 5, 1995. The only evidence as to how OPC has chosen to disseminate this information to customers has been in the form of leading or misleading

[6] The DCA's reversal of the Commission's approval of uniform rates in no way detracts from the Commission's findings regarding efficiency.

questions to customers at the service hearings. OPC, as counsel to all SSU's customers for rate making purposes, has an obligation to notify customers of the facts and possible outcome of the ratemaking process and issues which arise during such process. SSU cannot be held to a standard whereby SSU must notify all customers whenever a new issue is raised by OPC or other parties or new developments occur.

13. SSU's customer notices are no more "highly misleading"[7] than OPC's rhetoric regarding the gain on sale and acquisition adjustment issues mentioned above. SSU's customer notices no more "lull the customers into the belief"[8] that rates will be at one level or another than does OPC's rhetoric on the gain on sale and acquisition adjustment issues.

14. OPC asserts that customers will be surprised to learn their rates may be higher as a result of the Commission's September 26 vote. Motion at p. 4. As stated above, when, if ever, the customers will see a change in rates resulting from the September 26 vote is not clear. This notwithstanding, the focus of this argument is upon the Commission's decision in Docket No. 920199-WS, not with any decision in this case. The Commission has already ruled that the notices given in Docket No. 920199-WS fully comply with the applicable legal requirements,[9] and OPC did not challenge

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[7] Motion at p. 3.

[8] Motion at p. 3.

[9] Order No. PSC-93-1598-FOF-WS, issued November 2, 1993, in Docket No. 920199-WS, "Order On Reconsideration?" at p. 4-8.

that ruling. Therefore, OPC has waived any arguments concerning notices for rate changes resulting directly or indirectly (in the form of interim rates) from Docket No. 920199-WS.[10]

15. OPC suggests that customers may be surprised by some form of stand-alone final rates greater than the uniform final rates SSU has proposed.[11] Motion at p. 4. The Commission rejected the legal basis for this very argument in Docket No. 920199-WS by approving rates in some service areas greater than what SSU requested for those areas and by upholding the sufficiency of SSU's notice.[12] OPC did not challenge that ruling. Moreover, no authority of any kind exists in support of the general proposition (without regard to noticing issues of any kind) that the Commission does not have the power to approve a rate or rates greater than utility requested rate or rates or the power to approve an overall revenue requirement greater than what a utility has requested. The Commission's statutory and constitutional obligations completely gainsay these myths. When **the record** reveals a utility's required revenues, the Commission cannot sidestep its statutory duty to set rates sufficient to allow the utility the opportunity to recover its prudent expenses and allowed return without the utility's consent and cannot unconstitutionally confiscate the utility's

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[10] Please also refer to SSU's September 22 Response to Citizens' Motion to Cap Rates.

[11] SSU suggests that if OPC is truly concerned with rate shock, OPC should support SSU's request for uniform rates, as avoidance of rate shock is one of uniform rates' recognized benefits.

[12] Order on Reconsideration in Docket No. 920199-WS.

capital. E.g. Utilities Operating Co. v. King, 143 So.2d 854 (Fla. 1962); Keystone Water Co. v. Bevis, 278 So.2d 606 (Fla. 1973); Gulf Power Co. v. Bevis, 289 So.2d 401 (Fla. 1974). Thus, the law is that **the record**, not the request, controls what the Commission can and cannot do.

16. Noticing pursuant to Section 120.57(1)(b)2, Florida Statutes, and the requirement that agencies offer substantially affected persons a clear point of entry into agency proceedings are distinct legal requirements which OPC has without explanation merged, as discussed in the paragraphs which follow.

17. Section 120.57(1)(b)2., Florida Statutes, provides in pertinent part as follows:

> All parties shall be afforded an opportunity for a hearing after reasonable notice of not less than 14 days . . . . The notice shall include:
>
> a. A statement of the time, place, and nature of the hearing.
>
> b. A statement of the legal authority and jurisdiction under which the hearing is to be held.
>
> c. A reference to the particular sections of the statutes and rules involved.
>
> d. Except for any hearing before an unemployment compensation appeals referee, a short and plain statement of the matters asserted by the agency and by all parties of record at the time notice is given. If the agency or any party is unable to state the matters in sufficient detail at the time the initial notice is given, the notice may be limited to a statement of the issues involved, and thereafter, upon timely written application, a more definite and detailed statement shall be furnished not less than 3 days prior to the date set for the hearing.

There are several essential elements to this statutory provision which OPC either disregards entirely or glosses over, specifically:

(1) the notice need only be provided to each "party," (2) the notice is to be distributed no later than 14 days before the scheduled agency hearing on final agency action, and (3) the responsibility for ensuring noticing is of necessity on the agency, not the participants to the hearing.

a. Section 120.57(1)(b)2 requires that the 14-day hearing notice be given to each "party." In pertinent part, Section 120.52 (12), Florida Statutes, defines "party" as:

> (a) Specifically named persons whose substantial interests are being determined in the proceeding.
>
> (b) Any other person who, **as a matter of** constitutional **right**, provision of statute, or provision of agency regulation, **is entitled to participate** in whole or in part in the proceeding, **or whose substantial interests will be affected by proposed agency action, and who makes an appearance as a party.**
>
> (c) Any other person, including an agency staff member, allowed by the agency to intervene or participate in the proceeding as a party. . . . .

(Emphasis supplied.) SSU's customers are not a "party" to this proceeding as defined by Section 120.52(12). SSU's customers are not specifically named persons whose interests are being determined, as a permit applicant would be in a case before the Department of Environmental Protection or as SSU is in this case. SSU's customers are concededly persons whose substantial interests may be affected by agency action; although no action is yet proposed by the Commission. However, the only appearance made by customers **as** a party or parties have been through the customers statutorily appointed representative, OPC, and through the various homeowners groups which have been allowed to intervene as parties.

Thus, the notice required by Section 120.57(1)(b)2 need not be given to all persons whose interests may be substantially affected and, thus, need not be given to all SSU customers, but only to every "party." Section 120.57(1)(b)2 places the duty on each party or its respective counsel to disseminate the notice's content among the constituency which supports or makes up the party.

b. The notice required by Section 120.57(1)(b)2 must be given to each party no later than 14 days before the scheduled agency hearing. When Section 120.57(1)(b)2 is read in pari materia with the remainder of Section 120.57(1), the notice required is clearly notice of the final evidentiary hearing which is designed to formulate the basis for final agency action (proposed agency action perhaps in some cases). The required notice is therefore, not the initial rate case customer notice and notices of service hearing required by Commission rules, which OPC seems to suggest. The Commission has consistently issued parties a notice meeting all of the requirements of Section 120.57(1)(b)2 prior to the final evidentiary hearing in each case. So as to meet the content requirement of Section 120.57(1)(b)2.d, this notice typically references the Prehearing Order, wherein appears a short and plain statement of all issues and positions of the Commission and the parties to the proceeding. The Prehearing Order is distributed to all parties upon issuance. According to the CASR for this docket, the Commission's final hearing notice will be issued on January 12, 1996, more than 14 days prior to the final evidentiary hearing.

c. Chapter 120 generally governs procedures for proceedings

before agencies; it does not serve to directly regulate the participants in those proceedings. The responsibility for ensuring compliance with the procedures of Chapter 120 is, therefore, on the agency, not the participants to the proceedings. In its Motion, OPC erroneously asserts that SSU has violated Section 120.57(1)(b)2.d. SSU has followed the Commission's rules regarding noticing for water and wastewater rate proceedings. Even if there is a violation of Section 120.57(1)(b)2.d, which SSU submits there is not, the responsibility is on the Commission for curing that violation by taking action of its own or by ordering SSU to take action.

17. One case OPC cites, Guerra v. Department of Labor & Employment Security, 427 So.2d 1098 (Fla. 3rd DCA 1983), supports the interpretation of Section 120.57(1)(b)2 that SSU espouses above. In Guerra, the court, in consolidated cases, held that the content requirement of Section 120.57(1)(b)2.d was mandatory[13] and that where a notice of final hearing excluded the content matter required by Section 120.57(1)(b)2.d, such exclusion was not harmless error where the agency's position and the witness' testimony supporting that position at the final evidentiary hearing were not previously divulged to the claimant. Thus, Guerra stands for the proposition that the Section 120.57(1)(b)2 notice is intended to be a notice of final hearing, and not any other type of notice.

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[13] The Legislature carved an exception to Section 120.57(1)(b)2.d for hearings before an unemployment compensation appeals referee after Guerra.

18. OPC's reliance on Totura v. Department of State, Division of Licensing, 553 So.2d 272 (Fla. 1st DCA 1989), also is misplaced. The issue in Totura was whether a named person whose interests were substantially affected by a proposed agency action order waived a point of entry into the agency proceedings where the notice of proposed action did not specify the facts which formulated the basis for the order and where the affected person's initial response to the order was a blanket denial of the facts. Totura is inapposite for a number of reasons. The focus of Totura is with the law of clear point of entry, proposed agency action, and waiver. In this rate proceeding, OPC is already a party and declares that it represents all, not just some, of SSU's customers. How then can OPC assert that persons it represents have not been afforded a clear point of entry? Furthermore, the instant rate case does not involve proposed agency action. Section 367.081(8), Florida Statutes, makes separate provision for disposing of rate requests by proposed agency action. This proceeding is progressing to hearing on the application of SSU. Final agency action will occur at the conclusion of the proceeding. OPC is a party to this proceeding, representing all of the customers. OPC has filed copious pleadings and will undoubtedly participate in the hearing. Does OPC then claim a right to a second clear point of entry after final agency action? OPC's vague arguments make no practical sense. Further, the Totura court, although invoking Section 120.57(1)(b)2, placed little or no reliance on that provision. The court succinctly held, "Under these circumstances, the department

was premature in determining that appellants had waived a clear point of entry by their failure to make an adequate request for hearing." Id. at 274. OPC has already made its entry in this case on behalf of all SSU customers, and, for that reason alone, Totura provides no support for OPC's Motion.

19. A substantially affected person must be provided with a "clear point of entry, within a specified time period after some recognizable event in investigatory or other free-form proceedings, to formal or informal proceedings under Section 120.57(1)." Capeletti Brothers, Inc. v. State, Department of Transportation, 362 So.2d 346, 348 (Fla. 1st DCA 1978). SSU's initial customer notice provides a clear point of entry meeting all of the requirements of Florida case law. See e.g. Gulf Coast Home Health Services of Florida, Inc. v. Department of Health and Rehabilitative Services, 515 So.2d 1009 (Fla. 1st DCA 1987) (notice of litigation published in Florida Administrative Weekly sufficient to provide clear point of entry to persons interested in certificate of need case where HRS changed its position after applicant protested proposed agency action); City of Plant City v. Mayo, 337 So.2d 966 (Fla. 1976).

20. Plant City, supra, cited by SSU in its prior responses to OPC motions, is controlling precedent for the present situation. As established in paragraph 11 above, what SSU knew about the future of the uniform rate structure was that the rate structure was more likely to continue than not. SSU cannot be held to a standard of prescience as to what the Commission would vote on

September 26 -- nearly two months after the rate application was filed -- particularly after the Commission had decided that SSU operate done system statewide on June 17, 1995 (thus clearing the way for a uniform rate structure). Moreover, in the present Motion OPC cites no basis for its claim that Tampa Electric Company did not know about the possibility that municipal franchise fees would be redistributed among customer groups prior to the decision that gave rise to the Plant City opinion. The Commission should focus on the court's rationale in Plant City. In response to the argument that a disseminated notice was inadequate with regard to a particular issue decided by the Commission, the court wrote as follows:

> [W]e must agree . . . that more precision is probably not possible and in any event not required. To do so would either confine the Commission unreasonably in approving rate changes, **or require a pre-hearing procedure to tailor the notice to the matters which would later be developed.** We conclude, therefore, that the Commission's standard form of notice for rate hearings imparts sufficient information for interested persons to avail themselves of participation.

337 So.2d at 971 (emphasis added). As suggested by the court in Plant City, a pre-hearing procedure to sculpt the perfect notice is impossible as a practical matter and would unreasonably confine the Commission. The purpose of the customer notice, the court stated, is to notify interested persons to avail themselves of participation, and SSU's notice fulfills this purpose, as evidenced at least in part by OPC's participation on behalf of all SSU's customers and the intervention by other customer groups. If the notice should reflect the substance of every issue possibly

detrimental to the customers interests, the notice would not only be too long to be of any benefit, but would also a fortiori have to specifically alert the customers to the acquisition adjustment and gain on sale matters identified in paragraph 11.f. above.

21. One last OPC contention deserves the passing attention of the Commission. On page 4, footnote 1, of its Motion, OPC takes issue with what it calls the "standard disclaimer" in the "fine print" of SSU's initial customer notice. The characterization of the language as being in "fine print" illustrates the level to which OPC will stoop to support its specious contentions. The language OPC refers to, which is in the same font and text format as all the other language in the Commission-approved initial rate case customer notice, is as follows:

> Although Southern States has proposed certain revisions to its existing rates in order to generate additional revenues, the Commission is not bound by such proposals and will give consideration to applying said revenue increases, if any are authorized, in the manner the Commission deems fair, reasonable, and proper.

SSU submits that this language very clearly and concisely puts customers on notice that the Commission may or may not approve a rate increase and may or may not change SSU's existing rate structure. No more need be said for the customers to recognize that they may want to avail themselves of participation in the case.

22. In consideration of the foregoing, the Commission must reject OPC's Motion. However, since the Commission may find sufficient basis to at least be concerned with the adequacy of the information the Commission has approved for SSU to distribute, the

Commission should consider this matter in as expedited a manner as possible. If renoticing and new service hearings are found necessary, SSU maintains that both must take place within the eight-month statutory clock, as stated in SSU's September 15 response to OPC's Third Motion to Dismiss. SSU will stipulate to the revised noticing suggestions OPC lists on page 7 of its Motion, subject to clarification as to the purpose behind the third such demand, **provided** the parties stipulate and the Commission accepts that SSU's so doing and SSU's filing of an amended interim rate request, if any, will not serve to restart the eight-month clock for final rates **and provided** the parties stipulate and the Commission accepts that any rate structure and associated rates the Commission might approve for SSU's individual service areas other than a uniform rate structure and rates will not be limited by revenue requirements derived for service areas previously under uniform rates on a service area specific basis.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Response to Citizens' Motion for Reconsideration was furnished by U.S. Mail to the following this 16th day of October, 1995:

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