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December 11, 1995

FILED

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

HAND DELIVERY

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 OPC's Motion to Dismiss SSU's Supplemental Petition for Interim Revenue Relief;
2. Original and fifteen copies of SSU's Response to OPC's Motion to Cap SSU's Maximum Interim Rates; and
3. A disk in Word Perfect 6.0 containing a copy of the these documents entitled "OPC-MTD1.RSP" and "OPC-CAP2.RSP."

ACK

AFA 3

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

APP

Thank you for your assistance with this filing.

CAP

CYC

Sincerely,

CE

Kenneth A. Hoffman

DE

DI

DO

DP

DR

DS

DT

DU

DV

KAH/rl

cc: All Parties of Record
TR1873

RECEIVED & FILED

Response Mot. Dismiss
DOCUMENT NUMBER-DATE

12430 DEC 11 88

FPSC-RECORDS/REPORTING

Response Mot. Cap
DOCUMENT NUMBER-DATE

12431 DEC 11 88

FPSC-RECORDS/REPORTING

WBS Willis

OTH

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

RECEIVED
DEC 11 1995

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, Highlands, Lake, Lee,)
Marion Martin, Nassau, Orange,)
Osceola, Pasco, Putnam, Seminole,)
St. Johns, St. Lucie, Volusia,)
and Washington Counties.)

Docket No. 950495-WS

Filed: December 11, 1995

SSU'S RESPONSE TO OPC'S MOTION TO DISMISS
SSU'S SUPPLEMENTAL PETITION FOR INTERIM REVENUE RELIEF

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 Motion to Dismiss SSU's Supplemental Petition for Interim Revenue Relief filed by the Office of Public Counsel ("OPC") on December 4, 1995. In support of this Response, SSU states as follows:

1. SSU asserts, as it has previously,¹ that OPC does not have standing to participate in any Commission interim rates determination. There is no authority for OPC's attempt to interject itself in an interim rate determination other than as sanctioned by Section 367.082(3), Florida Statutes.² By Order No.

¹ SSU incorporates by reference the standing arguments it made in its prior pleadings, specifically SSU's September 6 Response to OPC's Motion to Dismiss Request for an Interim Increase in Rates and SSU's September 22 Response to OPC's Motion to Cap Rates. See also Section 120.72(3), Florida Statutes, which exempts interim rate determinations from Chapter 120 requirements.

² The instant Motion on its face has nothing to do with Section 367.082(3).

DOCUMENT NUMBER-DATE

12430 DEC 11 1995 4191

FPSC-RECORDS/REPORTING

PSC-95-1327-FOF-WS ("Order Denying Request for Interim Rate Relief"), the Commission confirmed as much and denied OPC's August 30, 1995 motion to dismiss SSU's request for interim rate relief. The Commission stated,

Section 367.082, Florida Statutes, and our procedures do not contemplate parties filing a response or motion regarding a utility's request for interim rates.

. . . . [W]e find that OPC's motion to dismiss the interim rate request is an inappropriate motion and shall be denied.

Order at pp. 7-8. No party filed a timely motion for reconsideration of that portion of the Order Denying Interim Rate Relief, so OPC's right to question the Commission's decision that OPC does not have standing to seek dismissal of SSU's Supplemental Petition has been waived in accordance with Rule 25-22.060(1)(d), Florida Administrative Code. Accordingly, the instant Motion should be denied due to OPC's lack of standing to participate in interim rate determinations and because the Commission previously has determined that a motion to dismiss an interim rate request is an inappropriate motion. If, however, the Commission considers the substance of OPC's Motion, the Motion should be denied for the reasons stated below.

2. In the Order Denying Request for Interim Rate Relief, the Commission states as follows:

While we will not rule now on the merits of any refiled petition, because of the unique nature of this case, the utility may, if it chooses, file another petition for interim rates. Should it do so, the utility is advised to consider the findings made herein as direction as to the proper filing.

Order at p. 5. OPC did not, through a motion for reconsideration,

and does not, in the instant Motion, dispute the Commission's authorization of the filing of the Supplemental Petition.

3. OPC characterizes SSU's Supplemental Petition for Interim Revenue Relief as follows:

2. SSU's Supplemental Petition filed November 13, 1995, is simply another request for the same rates already rejected by the Commission. SSU carefully crafted its Supplemental Petition so that it did not actually request the Commission to grant any of the alternative rate proposals generally described at page 5 of the Supplemental Petition.

OPC's Motion, at p. 1-2. OPC's characterization of SSU's Supplemental Petition is a serious misstatement of fact. The first paragraph of SSU's Supplemental Petition makes three things very clear. First, that the "information and rate design alternatives are provided to present the Commission with information requested to permit a simplified analysis of uniform, stand-alone and/or modified stand-alone rate design alternatives for the years 1994 (interim), 1995 (interim) and 1996 (final). Second, that such information and rate design alternatives are provided pursuant to the Commission's Order Denying Request for Interim Rate Relief. Third, and contrary to the representation of OPC in its Motion, SSU specifically states that:

The information provided herewith is intended to both permit the Commission to provide SSU interim rates based either on a 1994 or 1995 interim test year and to provide all parties and their clients (i.e., SSU's customers) with rate design information which shows the spectrum of rates and monthly bills which potentially could result at the conclusion of this proceeding.

SSU's Supplemental Petition for Interim Revenue Relief, at p. 1-2.

4. The Supplemental Petition proposes the Commission use a 1995 projected test year to derive a uniform percentage increase on SSU's existing rates. For a large number of service areas, SSU's existing rates are, as of the date of this pleading, still uniform rates. The Supplemental Petition contains alternative rate design proposals for 1995 and 1994 interim test years in the event the Commission elects not to use the rate design or test year SSU has proposed.

5. As stated above, the Commission did not preclude SSU from requesting a uniform percentage increase on existing rates or a 1995 test year. SSU could request whatever it chose. Further, it should be noted that SSU maintains in the Supplemental Petition that the Commission erred to the extent it rejected SSU's first rate structure proposal because there were no rates other than the authorized, existing uniform rates to apply the interim increase to³ and the Commission has never, to SSU's knowledge, previously redesigned rates in an interim rates determination. SSU also maintains in the Supplemental Petition that the Commission erred in rejecting the 1995 interim test year because SSU's 1995 year-to-date projections are, in total, very close to actual 1995 year-to-date figures. SSU's renewed proposal notwithstanding, the Supplemental Petition also offers alternative rate design proposals for 1995 and 1994 consistent with the advisement of the Commission

³ The Commission accepted SSU's minimum filing requirements on this basis.

for the Commission to consider as it sees fit including the plant-by-plant workpapers which support findings of plant-by-plant revenue requirements if needed. Thus, the Commission has valid factual and legal grounds to grant SSU's renewed request or any of the alternatives offered through the Supplemental Petition.

6. OPC's Motion requests the arbitrary denial of SSU's interim revenue requirements notwithstanding that, as a matter of law, such interim revenues must be granted based on the prima facie showing of entitlement thereto supported by the additional information in the Supplemental Petition. See §367.082(1) and (5), Fla. Stat. OPC's request is contrary to both the letter⁴ and intent⁵ of the interim statute and should therefore be denied.

WHEREFORE, in consideration of the foregoing, Southern States Utilities, Inc. requests that the Commission deny the Office of Public Counsel's Motion to Dismiss SSU's Supplemental Petition for Interim Revenue Relief.

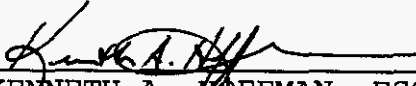
⁴ Section 367.082(2)(a), Florida Statutes, which states in pertinent part:

In a proceeding for an interim increase, the commission **shall authorize . . .** the collection of rates sufficient to earn the minimum of the range of rate of return calculated in accordance with subparagraph (5)(b)2.

(Emphasis added.)

⁵ Citizens of Florida v. Mayo, 316 So.2d 262, (Fla. 1975) and Florida Power Corporation v. Hawkins, 367 So.2d 1011 (Fla. 1979).

Respectfully submitted,


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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was furnished by U.S. Mail to the following this 11th day of December, 1995:

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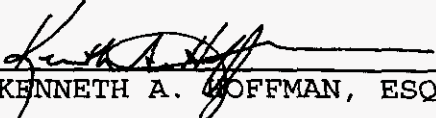
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