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JACK SHREVE
PUBLIC COUNSEL

STATE OF FLORIDA
OFFICE OF THE PUBLIC COUNSEL

c/o The Florida Legislature
111 West Madison Street
Room 812
Tallahassee, Florida 32399-1400
904-488-9330

January 9, 1997

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 Citizen's Motion to Set Schedule.

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

Charles J. Beck
Deputy Public Counsel

- ACK
- AFA 1
- APP 2 CJB:bsr
- CAF
- CMU Enclosures
- CTR
- EAG
- LEG 1
- LIN 5
- OPC
- RCH
- SEC
- WAS Wills
- OTH

RECEIVED & FILED
[Signature]
FPSC-BUREAU OF RECORDS

DOCUMENT NUMBER-DATE
00293 JAN-95
FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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: January 9, 1997

**MOTION TO ESTABLISH SCHEDULE FOR FILING
MOTIONS FOR RECONSIDERATION**

The Citizens of Florida ("Citizens"), by and through Jack Shreve, Public Counsel, request the prehearing officer issue an order setting forth a schedule for filing and/or readopting motions and cross-motions for reconsideration.

1. The Commission issued its final order in this docket (Order 96-1320-FOF-WS) on October 30, 1996. Two days later, Southern States Utilities, Inc. ("Southern States") filed a Notice of Appeal with the First District Court of Appeal. The Notice of Appeal divested the Commission's jurisdiction to entertain motions for reconsideration of its final order.

2. On November 14, 1996, Citrus County *et. al.* ("Citrus County") filed a motion

for reconsideration with the Commission even though the Commission had no jurisdiction to consider the motion. At the same time, it filed a motion to relinquish jurisdiction with the First District Court of Appeal that asked the court to allow the Commission to consider motions for reconsideration. On November 26, 1996, Southern States filed a cross motion for reconsideration with the Commission while the Commission still had no jurisdiction to consider such a motion.

3. On December 2, 1996, the First District Court of Appeal entered a order granting the relief requested by Citrus County and abated the appeal pending disposition of their pending motion for reconsideration at the Florida Public Service Commission. The Citizens then asked the Court to reconsider its order, and Southern States asked the Court to clarify its order. On December 31, 1996, the Court granted the Motions for Reconsideration and Clarification and amended its December 2, 1996 order to state that the appeal was abated pending the Commission's disposition of all motions or cross-motions for reconsideration of the appealed order. The Court further stated that "the determination of the timeliness or propriety of any such motions or cross-motions shall be made by the lower tribunal."

4. Commission Rule 25-22.060(3) requires motions for reconsideration of a final order to be filed within 15 days after issuance of the order. However, the rule does not contemplate or address the situation where a party files a notice of appeal two days after issuance of the final order, thereby divesting the Commission of jurisdiction to consider

motions for reconsideration. The only reason the Commission may now entertain motions for reconsideration is the Court's decision to abate the appeal and temporarily relinquish jurisdiction.

5. Since the Commission's rule governing the time limits for filing motions for reconsideration do not contemplate the situation presented here, the Citizens request the prehearing officer to issue a schedule allowing parties to file motions for reconsideration and/or adopt the motions and cross-motions for reconsideration previously filed with the Commission. The Citizens intend to seek reconsideration on a number of points, one of which was described in the Citizen's pleading filed December 16, 1996, opposing Southern States request to release the bond securing its refund of interim rates. That motion showed that the Commission made a mistake of law when it refused to refund interim rates to any customers located in areas included in Southern States' last rate case, even if their interim rates in this case were higher than their final rates.

WHEREFORE, the Citizens request the prehearing officer issue an order setting forth a schedule for filing and/or readopting motions and cross-motions for reconsideration.

Respectfully submitted,

JACK SHREVE
Public Counsel



Charles J. Beck
Deputy Public Counsel

Office of Public Counsel

c/o The Florida Legislature
111 West Madison Street
Room 812
Tallahassee, FL 32399-1400

Attorneys for the Citizens
of the State of Florida

**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 January, 1997.

Ken Hoffman, Esq.
William B. Willingham, Esq.
Rutledge, Ecenia, Underwood
Purnell & Hoffman, P.A.
P.O. Box 551
Tallahassee, FL 32302-0551

*Lila Jaber, Esq.
Division of Legal Services
Fla. Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399

Brian Armstrong, Esq.
Matthew Feil, Esq.
Southern States Utilities
General Offices
1000 Color Place
Apopka, FL 32703

Michael B. Twomey, Esq.
P. O. Box 5256
Tallahassee, Florida
32314-5256

Arthur Jacobs, Esq.
Jacobs & Peters, P.A.
Post Office Box 1110
Fernandina Beach, FL
32035-1110

Darol H.N. Carr, Esq.
David Holmes, Esq.
Farr, Farr, Emerich, Sifrit,
Hackett & Carr, P.A.
2315 Aaron Street
P.O. Box 2159
Port Charlotte, FL 33949

Larry M. Haag, Esq.
County Attorney
111 West Main Street
Suite B
Inverness, Florida 34450

Joseph A. McGlothlin, Esq.
McWhirter, Reeves, McGlothlin,
Davidson, Rief & Bakas, P.A.
117 S. Gadsden
Tallahassee, FL 32301



Charles J. Beck
Deputy Public Counsel

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