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March 3, 1997

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

Re: Docket No. 950495-WS

Dear Ms. Bayo:

Enclosed for filing in the above-referenced docket are the original and 15 copies of the Citizens' Motion for Reconsideration by the Full Commission. 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 1 _____
- CAF _____ CJB:bsr
- CMU _____ Enclosures
- CTR _____
- EAG _____
- LEG 1 _____
- LIN 5 _____
- OPC _____
- RCH _____
- SEC 1 _____
- WAS _____
- OTH _____

DOCUMENT NUMBER-DATE

02270 MAR-35

FPSC-RECORDS/REPORTING

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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: March 3, 1997

MOTION FOR RECONSIDERATION BY THE FULL COMMISSION

Pursuant to rule 25-22.0376, Florida Administrative Code, the Citizens of Florida ("Citizens"), by and through Jack Shreve, Public Counsel, request the full Florida Public Service Commission to reconsider the Prehearing Officer's "Order Denying Motion to Establish Schedule for Filing Motions for Reconsideration," Order no. PSC-97-0190-PCO-WS, issued February 19, 1997.

1. The Prehearing Officer's order erroneously concluded that parties must file motions for reconsideration at a time when the Commission has no jurisdiction to consider such motions. The effect of the order is that parties will be forever precluded from seeking reconsideration in such instances unless they file motions that the Commission has no power or authority to entertain. The Commission's rules never contemplated such a result.

DOCUMENT NUMBER-DATE
02270 MAR-35
13661
FPSC-RECORDS/REPORTING

2. On December 2, 1996, the First District Court of Appeal entered an order abating the appeal of the Commission's final order pending disposition of a motion for reconsideration filed by Citrus County *et. al.* On December 31, 1996, the Court granted motions for reconsideration and clarification of its December 2, 1996 order. It amended the 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 should be made by the Commission.

3. On January 9, 1997, the Citizens filed a motion to establish a schedule for the filing of motions for reconsideration. That motion explained that Southern States Utilities, Inc. ("Southern States") filed a Notice of Appeal with the First District Court of Appeal on November 1, 1996, just two days after the Commission issued its final order in this docket (Order no. PSC-96-1320-FOF-WS). Southern States' Notice of Appeal divested the Commission's jurisdiction to entertain motions for reconsideration of its final order.

4. 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.

5. 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, as described previously.

6. 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 during the remainder of the 15 day period. The only reason the Commission may now entertain motions for reconsideration at all is because of the Court's specific decision to abate the appeal and temporarily relinquish jurisdiction back to the Commission.

7. The Prehearing Officer decided that parties must file motions for reconsideration within the fifteen day limit set forth in rule 25-22.060(3), even if the Commission's jurisdiction has already been divested by filing a notice of appeal. The

Prehearing Officer relied on the cases *City of Hollywood v. Public Employee Relations Commission*, 432 So.2d 79 (Fla. 4th D.C.A. 1983) and *Citizens of the State of Florida v. North Fort Myers Utility, Inc. and Public Service Commission*, No. 95-1439 (Fla. 1st D.C.A., November 16, 1995) to support this conclusion, but these cases do not stand for the proposition that parties must file motions for reconsideration at the Commission when it has no jurisdiction over the motions.

8. In both of the cited cases, the issue presented to the Court was whether an agency had authority to grant an extension of time to file a motion for reconsideration of an order so as to suspend the rendition of the order and thereby delay the time for filing a notice of appeal. The Court ruled that the agency lacked such authority. In contrast, here there was no attempt to suspend rendition of an order and delay the time for filing a notice of appeal. Indeed, the notice of appeal here actually took away the power of the Commission might otherwise have to consider a motion for reconsideration. The notice of appeal immediately divested the Commission's jurisdiction. It was only after the Court decided to abate the appeal, and temporarily return jurisdiction to the Commission, that the Commission received jurisdiction to once again consider motions for reconsideration.

9. Thus, there is no question here about which tribunal has jurisdiction at any specific time or whether the Commission may issue orders that would delay vesting jurisdiction with the Court. The First District Court of Appeal issued an order specifically abating the appeal and relinquishing jurisdiction back to the Commission so that it could

consider motions for reconsideration.

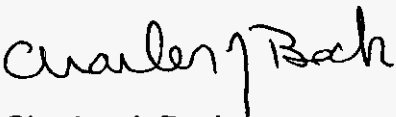
10. The Commission should allow all parties to file motions for reconsideration now that the Court has specifically, but temporarily, relinquished jurisdiction to the Commission to consider such motions. It was never contemplated that rule 25-22.060(3) would require parties to file pleadings over which the Commission has no jurisdiction. The time limits set forth in rule 25-22.060(3) should be construed to apply only in those instances where the Commission has jurisdiction to take up the motion controlled by the time limits delineated in the rule. It is a basic tenet of statutory construction that a statute should not be interpreted so as to yield an absurd result. *Louis Hanzelik, Trustee v. Grottoli and Hudson Investment of America, Inc.*, 22 Fla. L. Weekly D465 (Fla. 4th DCA February 28, 1997). That same tenet should be applied to the Commission's rule. It makes no sense to require a pleading to be filed with the Commission when the Commission can not act on the pleading.

11. The Citizens filed a motion for reconsideration on January 15, 1997. Responses to the motion for reconsideration have been filed, so the motion is ripe for a decision by the Commission.

WHEREFORE, the Citizens request the full Commission to reconsider the Prehearing Officer's order, allow all parties to file motions for reconsideration of the Commission's final order, and rule on the Citizens' Motion for Reconsideration.

Respectfully submitted,

JACK SHREVE
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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 3rd day of March, 1997.

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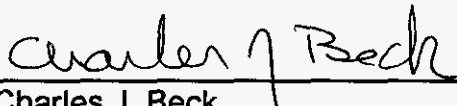
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