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March 17, 1997

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

**HAND DELIVERY**

Re: Docket No. 950495-WS

Dear Ms. Bayo:

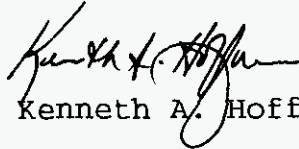
Enclosed herewith for filing in the above-referenced docket on behalf of Florida Water Services Corporation ("Florida Water") are the following documents:

1. Original and fifteen copies of Florida Water's Response in Opposition to OPC's Motion for Reconsideration of Order No. PSC-97-0190-PCO-WS;
2. Original and fifteen copies of Florida Water's Response in Opposition to OPC's Request for Oral Argument; and
3. A disk containing a copy of the Response in Opposition to OPC's Motion for Reconsideration of Order No. PSC-97-0190-PCO-WS.

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

cc: All Parties of Record

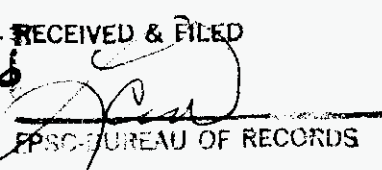
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**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Application by Southern )  
States Utilities, Inc. for rate )  
increase and increase in service )  
availability charges for 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, )  
Polk, Putnam, Seminole, St. Johns, )  
St. Lucie, Volusia and Washington )  
Counties. )  
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Docket No. 950495-WS

Filed: March 17, 1997

**FLORIDA WATER SERVICES CORPORATION'S  
RESPONSE IN OPPOSITION TO OPC'S  
MOTION FOR RECONSIDERATION OF  
ORDER NO. PSC-97-0190-PCO-WS**

Florida Water Services Corporation ("Florida Water"), formerly Southern States Utilities, Inc., by and through its undersigned counsel, hereby files its Response in Opposition to the Motion for Reconsideration of Order No. PSC-97-0190-PCO-WS ("Order") filed by the Office of Public Counsel ("OPC").

**A. BACKGROUND**

1. On October 30, 1996, the Commission issued Order No. PSC-96-1320-FOF-WS ("Final Order") in this docket. On November 1, Florida Water filed its Notice of Appeal of the Final Order. Florida Water's appeal was assigned First District Court of Appeal Case No. 96-04227. Subsequently, notices of cross-appeal were filed in First District Court of Appeal Case No. 96-04227. On November 26, OPC filed a Notice of Cross-Appeal and on November 27, a Notice of Cross-Appeal was filed by Intervenors Citrus County Board of County Commissioners, et. al. (hereinafter referred to

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collectively as "Citrus County").

2. In the meantime, on November 14, Citrus County timely filed a Motion for Reconsideration of the Final Order with the Commission. On the same date, Citrus County filed a Motion with the First District Court of Appeal asking the court "to temporarily relinquish jurisdiction of the case to the Florida Public Service Commission (for the) limited purpose of allowing it to hear motions for reconsideration of the Final Order published on October 30, 1996, but which order was appealed to this Court by Southern States Utilities, Inc. ("SSU") two days later on November 1, 1996."<sup>1</sup>

3. On November 26, Florida Water timely filed a Cross-Motion for Reconsideration of the Final Order with the Commission.

4. On December 2, the Court issued an order granting Citrus County's Motion to Relinquish Jurisdiction. The Court ruled:

[T]his appeal is abated pending disposition of the movants' pending motions for reconsideration by the lower tribunal. Time for filing notices of cross-appeal, briefs, and other matters pursuant to the rules of appellate procedure is tolled during the period of abatement.

5. On December 3, Florida Water filed a Motion for Clarification of the December 2 order requesting that the court clarify and confirm that the abatement of the appeal remain in effect pending disposition of both Citrus County's Motion for Reconsideration and Florida Water's Cross-Motion for Reconsideration.

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<sup>1</sup>See Citrus County Motion to Relinquish Jurisdiction filed in First DCA Case No. 96-04227, at 1 (emphasis supplied).

6. On December 4, OPC filed a Motion for Reconsideration and Clarification of the December 2 order asking the court to enter an order authorizing OPC to file a motion for reconsideration with the Commission well beyond the 15 day period (following the date of issuance of the Final Order) set forth in Rule 25-22.060(3), Florida Administrative Code.

7. On December 31, the court issued an order amending the December 2 order to reflect that:

... the appeal is abated pending the lower tribunal's disposition of all motions or cross-motions for reconsideration of the order for which review is sought in this proceeding. The determination of the timeliness or propriety of any such motion or cross-motion shall be made by the lower tribunal.

8. Having failed to secure an order from the First DCA authorizing an untimely motion for reconsideration, on January 9, 1997, OPC filed a motion asking the Commission to establish a schedule for the filing of an untimely motion for reconsideration.

9. On January 15, 1997, prior to receiving the authorization it sought from the Commission to file an untimely motion for reconsideration, OPC filed its Motion for Reconsideration.

10. On February 19, 1997, the Prehearing Officer issued the Order Denying OPC's Motion to Establish Schedule for Filing Motions for Reconsideration. OPC timely filed its Motion for Reconsideration of that Order.

#### **B. ARGUMENT**

11. OPC's Motion for Reconsideration provides no basis for reconsideration as it merely attempts to distinguish controlling

legal precedent which OPC failed to address in its original Motion to Establish Schedule for Filing Motions for Reconsideration.

12. The Order accepted and cited the argument and decisions cited by Florida Water in its Response to OPC's Motion to Establish Schedule which confirmed the principle of law that the time period for filing a motion for reconsideration is jurisdictional, non-discretionary and cannot be extended by the Commission. Specifically, consistent with the argument and cases cited at paragraph 11 of Florida Water's Response, the Order held as follows:

On January 9, 1997, the Office of Public Counsel filed a motion to establish a schedule for filing motions for reconsideration, which is the subject of this Order. This motion is not a motion for reconsideration, nor was it filed within the time required for the filing of post-hearing motions. Additionally, the First District Court of Appeal has made it abundantly clear in *City of Hollywood v. Public Employee Relations Commission*, 432 So.2d 79 (Fla. 4th DCA 1983), as recently applied in *Citizens of the State of Florida v. North Fort Myers Utility, Inc. and the Public Service Commission*, No. 95-1439 (Fla. 1st DCA, November 16, 1995) (order dismissing appeal), that the time schedules for seeking reconsideration are established by rule and are therefore not subject to the discretion of the Commission.<sup>2</sup>

13. OPC's Motion for Reconsideration asks the Commission to order what the First DCA refused to order, that is, authorization to file an untimely motion for reconsideration.<sup>3</sup> The Prehearing

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<sup>2</sup>Order No. PSC-97-0190-PCO-WS, at 1.

<sup>3</sup>In the December 2, 1996 order abating the appeal, the court did in fact toll the time for filing notices of cross-appeal, briefs and other matters pursuant to the Rules of Appellate

Officer applied the controlling case law and correctly denied OPC's request.

14. OPC's Motion for Reconsideration notably fails to point the full Commission to any mistake of fact or law made by the Prehearing Officer. Instead, the Motion belatedly offers OPC's attempt to distinguish the *City of Hollywood* and *North Fort Myers Utility* cases relied on by the Prehearing Officer in denying OPC's Motion to Establish Schedule.<sup>4</sup> Yet, in discussing these decisions, OPC openly admitted that the Commission lacks authority to extend the time for the filing of a motion for reconsideration. OPC states:

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.<sup>5</sup>

15. OPC also attempts to buttress its position by rehashing an argument made in its original Motion to Establish Schedule, i.e., that it could not timely file a motion for reconsideration because Florida Water's Notice of Appeal had divested the

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Procedure. The court specifically excluded from the December 2 order any tolling of the time for filing a motion for reconsideration under Commission Rule 25-22.060(3), Florida Administrative Code.

<sup>4</sup>OPC's belated attempt to distinguish these cases is a new argument inappropriately raised in its Motion for Reconsideration. See, e.g., *In re: Development of Local Exchange Telephone Company Cost Study Methodology(ies)*, 92 F.P.S.C. 3:666, 667 (1992).

<sup>5</sup>OPC's Motion for Reconsideration, at ¶ 8.

Commission of jurisdiction.<sup>6</sup> That argument has been raised by OPC and rejected by the Prehearing Officer and is, therefore, inappropriate for reconsideration.<sup>7</sup> Further, the credibility of that argument is undermined by the fact that on November 26, 1996, prior to the entry of the orders by the First DCA relinquishing jurisdiction to the Commission, OPC timely filed a notice of cross-appeal of the Final Order with the Commission. OPC asserts that it could not timely file a motion for reconsideration with the Commission when jurisdiction had been lodged with the First DCA by virtue of Florida Water's appeal. Yet, OPC timely filed its notice of cross-appeal when, again, jurisdiction had been lodged with the First DCA. Although Florida Water raised this inconsistency in its Response to the Motion to Establish Schedule, OPC is yet to explain its blatantly inconsistent actions.

16. The facts are that Citrus County complied with applicable law by timely filing its motion for reconsideration within fifteen days of the Final Order as required by Rule 25-22.060(3), Florida Administrative Code and then seeking relinquishment of jurisdiction from the First DCA pursuant to Rule 9.600(b), Florida Rules of Appellate Procedure. Florida Water also complied with applicable

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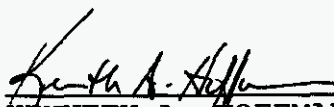
<sup>6</sup>See OPC's Motion to Establish Schedule, at ¶ 4 and OPC's Motion for Reconsideration, at ¶ 8.

<sup>7</sup>See, *Diamond Cab Company of Miami v. King*, 146 So.2d 888, 891 (Fla. 1962); *Pingree v. Quaintance*, 394 So.2d 161 (Fla. 1981); *In Re: Resolution of petition(s) to establish non-discriminatory rates, terms, and conditions for interconnection involving local exchange companies and alternative local exchange companies pursuant to Section 364.162, F.S., 96 F.P.S.C. 10:23, 24* (1996) (a motion for reconsideration is not an appropriate vehicle for rehashing matters already considered).

law by timely filing its cross-motion for reconsideration with the Commission and securing clarification of the Court's relinquishment of jurisdiction to include its cross-motion for reconsideration. OPC failed to preserve its rights by timely filing a motion for reconsideration. The Prehearing Officer correctly determined that the time period for filing a motion for reconsideration may not be extended by the Commission and therefore denied OPC's Motion to Establish Schedule. OPC has failed to provide a basis for the full Commission to reconsider and reverse the Prehearing Officer's Order.

WHEREFORE, for the foregoing reasons, Florida Water respectfully requests that the full Commission deny OPC's Motion for Reconsideration of Order No. PSC-97-0190-PCO-WS.

Respectfully submitted,

  
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of Florida Water Services Corporation's Response in Opposition to OPC's Motion for Reconsideration of Order No. PSC-97-0190-PCO-WS was furnished by U. S. Mail to the following on this 17th day of March, 1996:

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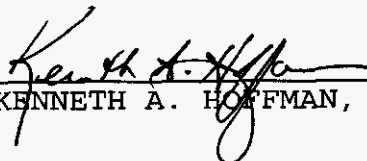
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