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September 12, 1997

Reply To:

Ocala

Blanco Bayo'  
Director of Records and Reporting  
Public Service Commission  
2540 Shumard Oak Blvd.  
Tallahassee, FL 32399

Re: Docket Number: 920199-WS

Dear Ms. Bayo' :

In connection with the above-referenced matter enclosed please find Petitioners, Joseph J. DeRouin, Victoria M. DeRouin, Peter H. Heeschen, Elizabeth A. Riordan, Carvell Simpson and Edward Slezak, Petition to Intervene and Motion for Formal Notice to Customers and Request for Extension of Time to File Briefs, along with fifteen copies of each of these pleadings for filing with your office.

Please feel free to contact me with any questions or comments. Thanking you in advance for your cooperation, I remain

Yours truly,

ACK \_\_\_\_\_  
AFA 4 *Charles R. Forman*  
APP 1  
CAJ \_\_\_\_\_  
CRF: sbs  
Enclosures

*Petition - 09337-97*  
*Motion - 09338-97*

CPM \_\_\_\_\_  
C.R. \_\_\_\_\_  
C.S. \_\_\_\_\_  
D.T. \_\_\_\_\_  
E.L. \_\_\_\_\_  
F.L. \_\_\_\_\_  
G.L. \_\_\_\_\_  
H.L. \_\_\_\_\_  
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V.L. \_\_\_\_\_  
W.L. \_\_\_\_\_  
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**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

IN RE: Application for rate increase)  
 in Brevard, Charlotte/Lee, Citrus, )  
 Clay, Duval, Highlands, Lake, )  
 Marion, Martin, Nassau, Orange, ) DOCKET NO.: 920199-WS  
 Osceola, Pasco, Putnam, Seminole, ) Filed: September 12, 1997  
 Volusia, and Washinton Counties by )  
 SOUTHERN STATES UTILITIES, INC.; )  
 Collier County by MARCO SHORES )  
 UTILITIES (Deltona); Hernando County)  
 by SPRING HILL UTILITIES (Deltona); )  
 and Volusia County by DELTONA LAKES )  
 UTILITIES (Deltona) )  
 \_\_\_\_\_ )

**PETITION TO INTERVENE**

Come now, Petitioners, Joseph J. DeRouin, Victoria M. DeRouin, Peter H. Heeschen, Elizabeth A. Riordan, Carvell Simpson and Edward Slezak, by and through their undersigned attorney, and file this Petition for Leave to Intervene pursuant to Rule 25-22.039, Florida Administrative Code, and state:

1. All notices, pleadings and correspondence should be sent

to:

Charles R. Forman  
 Forman, Krehl & Montgomery  
 320 Northwest 3rd Avenue  
 Ocala, Florida 34475  
 (352) 732-3915

on behalf of Petitioners.

**Substantial Interests**

2. Petitioners are a customers of Florida Water Services Corporation f/k/a Southern States Utilities, Inc.

3. There are matters pending in this docket regarding refunds and surcharges which will have a substantial financial impact on Petitioners.

4. In Order No. PSC-96-0406-FOF-WS, the Commission reconsidered its decision in Order No. PSC-95-1292-FOF-WS, which among other things, addressed rate structure and required Southern States Utilities, Inc. to make a refund. It is uncontroverted that the possiblity of the imposition of a surcharge on one group of Southern States Utilities, Inc. customers to finance a refund to other Southern States Utilities, Inc. customers did not arise until 1996, 4 years after the hearing and in wake of the 1996 decision of GTE v. Clark by the Florida Supreme Court. Due to the Florida Supreme Court's decision in GTE Florida, Inc. v. Clark, 668 So. 2d 971 (Fla. 1996), the Commission reconsidered its final order and asked parties to brief the issues surrounding the impact of the GTE decision on this case.

5. As the Commission is well aware, the Office of Public Counsel, which represents the Citizens of the State of Florida, has determined that it cannot protect and advocate on behalf of all customers on certain issues, such as refund and rate design, where different groups of customers have diverse and conflicting positions in the case.

6. Petitioners seek to address issues in this case for which they had no representation until September 12, 1997. Most significantly, unless permitted to intervene herein, certain groups of customers will have no representation on the issue of whether they will be backbilled to effectuate a refund to other customers. It would be difficult to imagine a more fundamental divergence of interest among customer groups. Yet the group of customers most exposed to injury is without representation on this issue. If the Commission is even to consider such an unprecedented action, all groups of affected customers must be represented and afforded due process. If Petitioners are not permitted to intervene, they will have no representation with respect to this critical issue.

7. Like the rate structure issue in Docket No. 950495-WS and Docket No. 920195-WS, the refund issue in this docket is one which puts varying groups of customers in conflict with each other. This potential conflict was not known until the entry of the Florida Supreme Court's GTE decision and this Commission's reconsideration order. As noted above, despite the conscientious and diligent initiative by Public Counsel to secure representation for all affected interests, appropriate arrangements for outside representation of customers with differing positions could not be made until September 12, 1997.

8. The Commission's disposition of the implementation of a refund, if any, and other rate structure issues, including but not limited to accrued interest, if any, will affect the substantial interests of the Petitioners under the standard set out in *Agrico Chemical Co. v. Department of Environmental Regulation*, 406 So. 2d 478 (Fla. 2d DCA 1981). *Agrico* requires a showing of (1) injury in fact and (2) that such injury is of the type the proceeding is designed to protect. As to the first portion of the *Agrico* test, Petitioners will clearly be harmed if the Commission implements the refund mechanism advocated by SSU and may be harmed by the ultimate rate design the Commission orders. As to the second part of the test, it is clear that in a rate case proceeding, ratepayer's interests are to be protected. Petitioners' interests will not be protected if they are not represented in this docket.

9. Petitioners are aware that this case has progressed to final hearing on remand and that they were not parties to the proceeding. However, as noted above, outside counsel has only recently been retained to represent Petitioners. Perhaps more importantly, the manner in which the required refund will be implemented may greatly impact Petitioners; especially, given the fact that SSU advocates collecting money from Petitioners to effectuate a refund to other customers - a result unprecedented in

Florida history.

10. Petitioners are entitled to participate in these proceedings pursuant to the opinion of the First District Court of Appeals filed June 17, 1997 in Southern States Utilities, Inc. v. Florida Public Service Commission, 22 F.L.W. D1492 (Fla. 1st DCA, June 17, 1997), due to their substantial financial interests in any decision of the Public Service Commission on the refund/surcharge issue.

11. Petitioners are entitled to participate in these proceedings not only in issues previously addressed, but also issues which may be unique to these Petitioners and their substantial financial interest in any decision of the Public Service Commission on the refund/surcharge issue.

12. Throughout this proceeding the Petitioners have been continuously denied a point of entry as required by Rule 25-22.029, Florida Administrative Code. Furthermore, no notice has been issued which complies with Rule 28-5.111, Florida Administrative Code, from which to determine timely filing for intervention into the proceeding, thereby, denying Petitioners constitutionally guaranteed rights of due process. Florida Optometric Association v. Florida Department of Professional Regulation Board of Opticianry, 567 So. 2d 928 (Fla. 1990). Moreover, the Appellate

Court in its recent opinion filed June 17, 1997 in Southern States Utilities, Inc. v. Florida Public Service Commission, suggests that the Commission approve intervention of all substantially interested persons into this proceeding.

13. Petitioners, as affected customers, are entitled to representation before this Commission.

**Disputed Issues of Material Fact**

14. Known disputed issues of material fact include, but are not limited to:

- A. The appropriate implementation mechanism for a refund, if any is made;
- B. The appropriate implementation mechanism for a surcharge, if any is made;
- C. The appropriate implementation mechanism for interest that may be due on refunds, if any;
- D. The appropriate implementation mechanism for interest that may be collectible on surcharges, if any;
- E. The effect of any such mechanism on Petitioners;
- F. Recovery of costs of proceedings.

**Ultimate Facts Alleged**

15. It is Petitioners' position that they will be substantially affected by Commission action in this docket, are previously unrepresented, and thus are entitled to intervene. It is further Petitioners' view that backbilling one group of customers to fund a refund to another group of customers is fundamentally unfair, unduly discriminatory and inequitable.

**Statutes**

16. The statutes entitling Petitioners to relief are section 120.57, 366.041, 366.06, and 366.07, Florida Statutes.

WHEREFORE, Petitioners request that their Petition to Intervene be granted and that they be accorded full party status.

I HERBY CERTIFY that a true copy of the foregoing has been furnished to the attached list of addressees, by U.S. Mail, this 12th day of September, 1997.

Respectfully submitted,

By *Charles R. Forman*

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**(DOCKET NO. 920199-WS)**

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