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November 6, 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 reviewing our copies of the Response Brief submitted on November 5, 1997, in connection with the above-referenced matter we have discovered a clerical error. Page 12 of the Intervenors', Joseph J. DeRouin, Victoria M. DeRouin, Peter H. Heeschen, Elizabeth A. Riordan, Carvell Simpson and Edward Slezak, Response to Florida Public Service Commission Request for Brief Pursuant to Order No. PCS-97-1290-PCO-WS, was not included in the fifteen (15) copies filed with the original in your office. Accordingly, enclosed please find fifteen (15) copies of Page 12.

ACK _____

AFA _____ please feel free to contact me with any questions or comments.

APP _____ Thanking you in advance for your cooperation, I remain

CAF _____

CMU _____ Yours truly,

CTR _____ *Charles R Forman /vt*

EAG _____ Charles R. Forman

LEG _____ 1

LIP _____ CRF/vt

OPC _____ Enclosures

RCH _____ cc: All parties on attached service list

REC _____ 1

OTH _____

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(DOCKET NO. 920199-WS)**

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Co. v. State, 1917, 73 Fla. 609, 74 So. 595.

While we find no statutory provision for issuance of temporary or emergency certificates or authority, this Court has u[p]held action of the Commission in which it granted temporary operating authority, but we specifically required that it be on application after notice and hearing.

This Court has always held that no change or modification could be made in any existing operation except upon affirmative finding by the Commission, after due notice and hearing, that public convenience and necessity required the change. *Central Truck Lines v. Railroad Commission*, 1935, 118 Fla. 555, 160 So. 26.

We are forced to the conclusion that Order No. 5397 was issued in violation of the applicable statutes, that the Commission did not have the authority to issue it under these circumstances, and therefore it was void when issued." *Southern Armored Service, Inc. v. Mason*, 167 So. 2d at 850, (Citations omitted.)

While the instant case did have notice and hearings on FWSC's application for a rate increase, there was no application, notice or hearings held on the statewide uniform rate structure imposed by the PSC which was subsequently reversed by the First District Court of Appeal.

- D. SUBSTANTIALLY AFFECTED PERSONS HAVE NOT BEEN PROPERLY NOTICED THROUGHOUT THE ENTIRE PROCEEDING AND THE PSC IS ATTEMPTING TO DEPRIVE THESE PERSONS OF DUE PROCESS BY NOT AFFORDING THEM THE OPPORTUNITY TO BE HEARD OR PRESENT EVIDENCE.

Once again, the PSC is proposing to enter an order that fails to provide procedural due process to the parties and substantially affected person in this action. The PSC will not allow evidence to be presented at its hearing and the notice to substantially