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November 15, 2002

Blanca S. Bayo, Director  
Division of the Commission Clerk  
and Administrative Services  
Florida Public Service Commission  
2540 Shumard Oak Blvd.  
Tallahassee, FL 32399-0850

Re: Docket No. 020384-GU

Dear Ms. Bayo:

Enclosed for filing in the above-referenced docket is the original and 15 copies of Citizens' Response to Peoples' Motion to Strike Rebuttal Testimony of Mark A. Cicchetti or, in the alternative, for Leave to File Surrebuttal Testimony.

Please indicate the time and date of receipt on the enclosed duplicate of this letter.

Sincerely,

H F. Rick Mann  
Associate Public Counsel

HFM:bsr

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DOCUMENT NUMBER-DATE

12577 NOV 15 02

FPSC-COMMISSION CLERK

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Application for a rate )  
increase by Tampa Electric )  
Company d/b/a Peoples Gas )  
System. )

Docket No. 020384-GU

Filed: November 15, 2002

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**CITIZENS' RESPONSE TO PEOPLES' MOTION TO STRIKE  
REBUTTAL TESTIMONY OF MARK A. CICHETTI  
OR, IN THE ALTERNATIVE,  
FOR LEAVE TO FILE SURREBUTTAL TESTIMONY**

The Citizens of Florida, by and through Jack Shreve, Public Counsel, file this their Response to Peoples' Motion To Strike Rebuttal Testimony Of Mark A. Cicchetti Or, In The Alternative, For Leave To File Surrebuttal Testimony, and say:

1. Peoples Gas System ("Peoples") filed its petition in this docket on June 27, 2002, and simultaneously filed the direct testimony and exhibits of its witnesses. The direct testimony of Peoples' witness on the issue of "cost of capital," Dr. Roger A. Morin, was included in that filing.
2. The Prehearing Officer in this case issued his Order Establishing Procedure, Order No. PSC-02-1031-PCO-GU, on July 30, 2002. Page 7 of that Order provides dates to govern the key activities of this case, in particular regarding the issue of this motion, for the filing of testimony. The Order separates and identifies the parties and instructs them to file their own "direct" testimony and exhibits on specified, separate dates. The Order then establishes November 12, 2002, as the date for all "Rebuttal" testimony to be filed. The Order Establishing Procedure identifies no single party possessing the sole right to file rebuttal. Neither does the Order provide any other dates for the filing of any other testimony.
3. The Citizens followed the governing dates established by the Prehearing Officer. They filed their direct testimony on the date allowed for an Intervenor (date modified by the Prehearing Officer to October 21, 2002) to do so, and availed themselves of the date provided for any party to file Rebuttal testimony - - timely filing the rebuttal testimony (no exhibits) of Mark A. Cicchetti.
4. The Citizens have faithfully complied with the Procedural Order of the Prehearing Officer. If so directed otherwise, Citizens would have added a section, or a separate filing, of rebuttal testimony to accompany the filing of Mr. Cicchetti's direct testimony on October 21. Mr. Cicchetti took no extra liberties in his filing - - his

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testimony is short, succinct, and addresses in rebuttal fashion, only the direct testimony filed by Dr. Morin on July 27, 2002.

5. The Order Establishing Procedure provides for no other filing of testimony in addition to those four that are identified in paragraph 2, above. There is no provision in the Order for the filing of "surrebuttal" testimony.

6. Although Citizens believe that Peoples has no right to file any "surrebuttal" testimony, Citizens have no objection to Dr. Morin filing late rebuttal to Mr. Cicchetti's rebuttal testimony, if he does so within a reasonable time: to wit, within the next week. This case is drawing close to the times scheduled for Prehearing and Hearing and it would be unfair to all parties to delay this supplemental filing beyond November 22, 2002.next week.

WHEREFORE, the Citizens request that Peoples' Motion to Strike the Rebuttal Testimony of Mark A. Cicchetti be denied. Citizens further request that if Dr. Morin is allowed to file supplemental rebuttal testimony that addresses Mr. Cicchetti's rebuttal testimony, that Dr. Morin do so by no later than November 22, 2002.

Respectfully submitted this 15<sup>th</sup> day of November, 2002,



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Attorney for the Citizens  
of the State of Florida

**DOCKET NO. 020384-GU  
CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of the foregoing Response to Peoples' Motion to Strike has been furnished by U.S. Mail or hand-delivery\* to the following parties on this 15th day of November 2002.



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