STATE OF FLORIDA

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January 15, 1997

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

Re: Case No. 950495-WS

Dear Ms. Bayo:

Enclosed for filing in the above-referenced docket are the original and 15 copies of Citizen's Motion for Reconsideration. 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

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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: January 15, 1997

MOTION FOR RECONSIDERATION

The Citizens of Florida ("Citizens"), by and through Jack Shreve, Public Counsel, request the Florida Public Service Commission to reconsider its order no. P.S.C.-96-1320-FOF-WS issued October 30, 1996 (hereafter "final order").

1. 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 shall be made by the lower tribunal.

2. On January 9, 1997, the Citizens filed with the Commission a motion to establish a schedule for the filing of motions for reconsideration. This pleading is the motion for reconsideration on which we seek a ruling.

THE COMMISSION ERRED BY DENYING REFUNDS OF INTERIM RATES TO ALL WATER AND WASTEWATER SYSTEMS INCLUDED IN SOUTHERN STATES PREVIOUS RATE CASE, DOCKET NO. 920199-WS

3. Commission Order No. P.S.C.-96-0125-FOF-WS issued January 25, 1996 (hereinafter "order granting interim rates"), granted Southern States' request for interim rates. The Commission calculated rate base for each individual facility (order granting interim rates at 5), calculated net operating income for each facility (order granting interim rates at 8), and calculated interim revenue requirements for each facility (order granting interim rates at 9). For those plants determined by the Commission to be underearning, the Commission calculated interim revenue requirements facility by facility using the minimum of the last authorized rate of return (order granting interim rates at 9). Interim rates were calculated based on these individual facility revenue requirements using a modified stand alone rate design (order granting interim rates at 10).

4. In the final rate decision, the Commission calculated revenue requirements in much the same fashion. Issue 115 asked whether Southern States' revenue requirement should be calculated on a plant specific basis. The staff recommended that the revenue requirement should be calculated on a plant specific basis, and the Commission agreed. The staff recommendation stated that if any revenue combinations needed to be made, they should be addressed as a rate issue, not as a revenue requirement issue. See staff recommendation dated July 24, 1996, at 423; transcript of July 31, 1996 special agenda at 343.

5. When it came time to determine whether the Commission should refund all or part of the interim rates, the Commission abandoned the facility by facility approach it used to set interim rates. Instead, the Commission decided to combine the revenue requirements for all of the plants included in Docket No. 920199-WS. By combining these revenue requirements, the Commission denied refunds to customers of numerous facilities who would be entitled to a refund if the Commission used revenue requirements on a facility by facility basis to determine refunds.

6. This inconsistent approach to setting interim rates and refunding interim rates violates the interim statute. Section 367.082, Florida Statutes (1995) directs the Commission to look at the revenue requirements "of the utility" both for the purpose of setting interim rates and determining the amount to be refunded. The approach is symmetric. The Commission cannot use one definition "of the utility" for setting rates

and use another definition for the purpose of determining the refund of interim rates.

7. Here, the Commission treated each of Southern State's facilities providing water or wastewater service as a "utility" for the purpose of setting rates. If it was improper for the Commission to interpret the word "utility" in the interim statute as each individual facility, the interim rate increase was wholly illegal and all amounts of the interim rate increase must be refunded. If it was proper to interpret the word "utility" as each individual facility, the Commission must use that same definition to determine the refund of interim rates because of the symmetric nature of the statute. In that case, Southern States must refund the difference between interim rates and final rates in every instance where the interim rates were higher than the final rates approved by the Commission.

THE COMMISSION MADE A MISTAKE OF FACT AND LAW WHEN IT REFUSED TO RECOGNIZED NEGATIVE ACQUISITION ADJUSTMENTS

8. At agenda conference there was virtually no discussion by the Commissioners concerning the issue of negative acquisition adjustments. Commissioner Deason stated that he would be voting in the minority, while the other Commissioners said nothing about the staff recommendation. The entire discussion, including the introduction by staff and Commissioner Deason's statement, occupied only 17 lines of the transcript. Transcript of agenda conference at 242.

9. Both the staff recommendation and the final order rely extensively on Commission non-rule policy. The staff recommendation cites Commission order no. 25729 issued February 17, 1992, as the non-rule policy used to reject the negative acquisition adjustments in this case. Staff recommendation dated July 24, 1996, at 230-231; final order at 101. Based on a rationale of providing an incentive for larger utilities to acquire small, troubled utilities, the order expresses a Commission policy that the purchase of a utility system at a premium or discount should not affect rate base. Final order at 101.

10. The facts in this case do not support the application of this non-rule policy to the Citizens. By far the largest negative acquisition adjustments in this case relate to Lehigh Utilities Corporation and Deltona Corporation. There is no evidence whatsoever that either of these utilities were small, troubled utilities. In fact, the evidence indicates the contrary. For example, Mr. Frank Kane, Chairman of the Concerned Citizens of Lehigh Acres, provided evidence that Lehigh Utilities had been consistently profitable with pretax earnings in the one million dollar range over the several years preceding its purchase. Moreover, the outlook for Lehigh Utilities was favorable. Revenue growth averaged 7 percent per year over the five year preceding its purchase, and it was anticipated to grow at least this fast into the foreseeable future. Ft. Myers Service Hearing, February 8, 1996, at 70-71.

11. The Commission's refusal to recognize negative acquisition adjustments

is a mistake of both fact and law. According to Section 120.57(1)(e), Florida Statutes (Supp. 1996), any agency action that determines the substantial interest of a party and that is based on an unadopted rule is subject to *de novo* review by an administrative law judge. In such a review, the agency action is not presumed valid or invalid. The agency must demonstrate that its unadopted rule is, among other things, not vague; establishes adequate standards for agency decisions or does not vest unbridled discretion in the agency; is not arbitrary or capricious; and is supported competent and substantial evidence. The Commission's decision fails these criteria. Nothing in the record indicates that Lehigh, Deltona, or the other systems were small, troubled utilities that required an incentive to be purchased by a larger utility.

12. The only other basis provided by the Commission for its refusal to recognize negative acquisition adjustments is a statement that the transactions involving Lehigh and Deltona were sales of stock, not assets. With respect to this statement, the staff recommendation and final order do not even provide a rationale for the application of this non-rule policy. Such a distinction elevates form over substance and has nothing to do with the issue of whether a negative acquisition adjustment should be recognized. Like the application of non-rule policy concerning small, troubled utilities, the application this non-rule policy concerning stock transactions fails the criteria set forth in section 120.57(1)(e), Florida Statutes (Supp. 1996).

13. The Commission's mistakes of law and fact harm ratepayers. It forces

customers to pay higher rates to provide a return to Southern States on investments it never made. It is simply unfair to require ratepayers to pay both a return on investment and depreciation expense on an investment which was not even made by the company. Larkin/DeRonne, Tr. 2649. Further, recognizing negative acquisition adjustments in rate base does not discourage necessary system improvement and repairs. Necessary capital improvement and normal recurring expenses, if prudently incurred, are recoverable under rate of return regulation. Larkin/DeRonne, Tr. 2651.

14. On reconsideration, the Commission should recognize negative acquisition adjustments and reduce customer's rates so that the rates provide a fair return to Southern States, not an undeserved windfall.

THE COMMISSION MADE A MISTAKE OF LAW AND FACT BY REFUSING TO RECOGNIZE SOUTHERN STATES' GAIN ON SALE OF $19 MILLION DOLLARS FOR ITS VENICE GARDENS UTILITY SYSTEM.

15. The Citizens presented considerable evidence to the Commission outlining a series of reasons why the Commission should recognize the $19 million gain on sale of Southern State's Venice Gardens Utility System. Tr. 2732-2740; Tr. 2843-2844; Ex. 175, Sch. 8; and Ex.. 178. The Commission devoted only nine lines of the transcript of agenda conference to this issue. Transcript of agenda conference at 340, lines 12-20.

16. The staff recommendation, adopted by the Commission, relied on non-rule policy. The final order, for example, states that "staff believes that the circumstances surrounding the VGU sale are consistent with those in the SAS sale and similar treatment should be afforded based on the Commission's previous decision in Docket No. 920199-WS. The record lacks competent substantial evidence to support the contrary." Staff recommendation at 406. SAS (St. Augustine Shores), the Commission noted, was regulated by a non-FPSC county. Had either the SAS or VGU facilities been previously included in the uniform rate structure, the situation would have been different, according to the Commission. Final order at 200.

17. The Commission routinely amortizes gains and losses on sales of systems above the line. For example, when Southern States sold its Skyline Hills water system, the Commission amortized the loss on the sale of that system, thereby increasing customers' rates. Commission order no. 17168 at 9.

18. The Citizens provided competent, substantial evidence that the Venice Gardens Utility System, when owned by Southern States, caused costs that were charged to ratepayers coming under the jurisdiction of the Florida Public Service Commission. Southern States' method of allocating all administrative and general expenses requires that all customers share in these costs regardless of which system incurred the expense. Dismukes, Tr. 2738. For example, Southern States incurred fourteen thousand dollars of legal fees concerning permitting, EPA and/or DER

violations for the Venice Gardens Utility System. These fees were not directly charged to the Venice Garden Utility System, but instead were charged to all customers of Southern States Utilities. Even though these amounts in this particular instance were not large, it was Southern States' policy, endorsed by the Florida Public Service Commission, to treat all of its systems as if they were one. The company therefore allocated all administrative and general expenses and customer expenses regardless of which system benefitted from the expenses. Dismukes, Tr. 2738-2739. Under the methodology approved and adopted by the Commission, costs incurred in non-FPSC counties are inextricably intertwined with the costs charged to customers in FPSC counties.

19. Accordingly, the staff incorrectly stated that the record lacks competent substantial evidence supporting the Citizens' position. The Commission applied non-rule policy to the Citizens based on this incorrect statement.

20. Contrary to those instances where ratepayers have been forced to pay for losses on the sale of systems, the Commission in this case simply allowed Southern States to walk away with a $19 million dollar gain without providing any benefit to any ratepayers in the state. The Commission should have applied its customary policy of flowing these benefits through to ratepayers over a five year period and reduced customers' rates.

WHEREFORE, the Citizens respectfully request the Commission to reconsider its order no. P.S.C.-96-1320-FOF-WS issued October 30, 1996, and reduce rates accordingly.

Respectfully submitted,

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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 15th day of January, 1997.

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