

10-12

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September 29, 1995

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 Southern States Utilities, Inc. ("SSU") are the following documents:

1. Original and fifteen copies of SSU's Response to Citizens' Fifth Motion to Compel, Fifth Motion to Postpone Date for Filing Testimony, and Motion for Protective Order;
2. Original and fifteen copies of SSU's Response to Citizens' Sixth Motion to Compel, Sixth Motion to Postpone Date for Filing Testimony, and Motion to Impose Sanctions;
3. Original and fifteen copies of Response of Southern States Utilities, Inc. in Opposition to Public Counsel's Fourth Motion to Dismiss; and
4. A disk in Word Perfect 6.0 containing a copy of the documents.

3

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B

*Fifth Motion*  
DOCUMENT NUMBER-DATE

09726 SEP 29 88

FPSC-RECORDS/REPORTING

*Sixth Motion*      *Fourth Motion*  
DOCUMENT NUMBER-DATE      DOCUMENT NUMBER-DATE

09727 SEP 29 88

09728 SEP 29 88

FPSC-RECORDS/REPORTING      FPSC-RECORDS/REPORTING

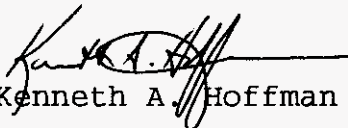
*Willis*

Ms. Blanca S. Bayo, Director  
Page 2  
September 29, 1995

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

KAH/rl

cc: All Parties of Record

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application by Southern )  
 States Utilities, Inc. for rate )  
 increase and increase in service )  
 availability charges for Osceola )  
 Utilities, Inc., in Osceola )  
 County, and in Bradford, Brevard, )  
 Charlotte, Citrus, Clay, Collier, )  
 Duval, Hernando, Highlands, )  
 Hillsborough, Lake, Lee, Marion, )  
 Martin, Nassau, Orange, Osceola, )  
 Pasco, Polk, Putnam, Seminole, )  
 St. Johns, St. Lucie, Volusia, )  
 and Washington Counties. )

ORIGINAL  
FILE COPY

Docket No. 950495-WS

Filed: September 29, 1995

**SSU'S RESPONSE TO CITIZENS' FIFTH MOTION TO COMPEL,  
 FIFTH MOTION TO POSTPONE DATE FOR FILING INTERVENOR TESTIMONY  
 AND SSU'S MOTION FOR PROTECTIVE ORDER**

SOUTHERN STATES UTILITIES, INC., ("SSU") by and through its undersigned counsel, and pursuant to Rule 25-22.037(2)(b), Florida Administrative Code, hereby files this Response to the Citizens' Fifth Motion to Compel and Fifth Motion to Postpone Date for Filing Intervenor Testimony (collectively referred to herein as the "Motion") which was filed by the Office of Public Counsel ("OPC") on September 22, 1995. Pursuant to Rule 25-22.034, Florida Administrative Code and Rule 1.280(c), Florida Rules of Civil Procedure, SSU also moves for a protective order as set forth herein below. In support of this Response and Motion for Protective Order, SSU states as follows:

1. OPC's Motion should be denied and SSU's Motion for Protective Order granted because OPC consented to SSU's manner of producing the documents which are the subject of OPC's Motion.

2. The subject of this OPC Motion is SSU's Response to

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DOCUMENT NUMBER-DATE

09726 SEP 29 95

FPSC-RECORDS/REPORTING

Document Request No. 71 from OPC's First Set of Document Requests, served July 18, 1995. Document Request No. 71 states as follows:

Provide a copy of all federal income tax returns for MPL for each of the years 1992, 1993, and 1994, including a complete copy of any and all schedules, workpapers, and consolidating schedules.

By response served September 7, 1995, OPC was notified of the manner in which SSU's ultimate parent, Minnesota Power & Light ("MPL"), would make available the requested tax returns, schedules, and workpapers ("tax return documents"). That Response, a copy of which is attached hereto as Exhibit A, states as follows:

The consolidated federal income tax returns for MPL, related workpapers and IRS correspondence will be made available for on-site review at the SSU offices in Apopka, FL with one weeks notice or may be reviewed at the offices of Minnesota Power in Duluth, MN.

Since these items are confidential, they will be available for review but may not be copied.

At no time prior to OPC's on-site review of the requested tax return documents did OPC express any disagreement whatsoever with SSU's proposed manner of inspection. SSU's proposed manner of inspection of tax return documents in this case is consistent with the accepted practice SSU and OPC have employed in the past for all SSU rate filings since MPL became the ultimate parent to SSU.

3. More importantly, however, before the response to Document Request No. 71 was served, SSU representatives met with OPC representatives in Apopka on September 1, 1995, to discuss various pending document requests which SSU agreed to produce on site. Present at this September 1 meeting were counsel for SSU,

SSU's Controller, SSU's Assistant Vice President of Finance and Administration, counsel for OPC, and a senior OPC staff accountant. During the course of the discussion, OPC's accountant mentioned the tax return documents and described the procedure for inspection which had been used in the past, noting that the tax return documents were available for review in the presence of an MPL employee but that no copies were allowed. At the conclusion of the accountant's statement, counsel for OPC responded to the effect that that was acceptable as long as the tax return documents could be inspected. OPC's accountant expressed agreement with counsel's statement, adding that the procedure did not trouble him particularly and he only wanted the procedure to be clear to counsel. At no time during that meeting did counsel for OPC express any disagreement with the manner of inspection proposed for the tax return documents. Counsel for OPC consented to the proposed method for inspection. OPC's representatives were also told that one week's advance notice would be needed prior to inspection of the tax return documents.

4. After a period of several days where counsel for SSU and counsel for OPC were unable to reach one another, a conference call among counsel for SSU, SSU's Assistant Vice President of Finance and Administration, counsel for OPC, and two senior OPC staff accountants took place on September 15, 1995. Prior to that date, counsel for OPC sent counsel for SSU a letter delineating items which OPC sought to inspect on-site in Apopka the following Monday, September 19, 1995. A copy of the aforementioned letter is

attached hereto and marked Exhibit B. Nowhere in the letter does OPC express disagreement with the manner for inspecting the tax return documents, and at no time during the conversation on the 15th did OPC express disagreement with the manner for inspecting the tax return documents.

5. Because of difficulties in coordinating PSC Staff participation in the tax return documents inspection, OPC requested during the same September 15 conference that SSU endeavor to make arrangements for OPC to inspect the tax return documents early in the week beginning September 18. This request was made even though the statement in the Response to Document Request No. 71 indicated that one week's notice would be needed. Fortunately, the MPL employee in charge of preparing the tax return documents and the C Schedules filed in the MFRs for this rate proceeding was available to travel to Apopka on short notice. As stated in OPC's Motion, OPC representatives inspected the tax return documents on September 19. It was on September 19 that OPC representatives for the first time expressed disagreement with the consent described hereinabove. Disagreement with the consent was expressed by OPC representatives to the MPL employee, who in turn called the disagreement to the attention of SSU counsel. On the morning of September 20, counsel for OPC informed SSU counsel that OPC intended to file a motion to compel SSU to provide copies of the tax return documents. After reaffirming SSU's position that copies of the tax return documents in their entirety would not be provided, SSU counsel suggested that OPC reexamine the documents in an attempt to identify those

specific items which OPC believed essential to copy. The clear intent of this suggestion was for OPC to limit what it needed in order to avoid yet another motion to compel. To accommodate this plan, the MPL employee cancelled his return travel plans so OPC's representatives could have a second inspection of the tax return documents. During that second inspection, OPC representatives compiled lists of the materials which they believed were essential to be copied. Those lists are attached hereto as Exhibit C. SSU submits that the items identified on Exhibit C are clearly not limited in scope.

6. Pursuant to Rule 25-22.034, Florida Administrative Code, the presiding officer may issue appropriate orders to effectuate the purposes of discovery. Pursuant to Rule 1.280(c), Florida Rules of Civil Procedure, for good cause shown, the presiding officer may enter an order protecting a party or person from annoyance, embarrassment, oppression, or undue burden or expense imposed upon the party or person by the discovery requests of another. In consideration of the above described facts, where OPC not only changed its position but had two opportunities to inspect the tax return documents, the Commission should deny OPC's Motion and enter a protective order restricting OPC from obtaining copies of the tax return documents.

7. The Commission should also weigh the following additional factors which demonstrate how OPC's request for copies would

constitute annoyance, embarrassment and oppression.<sup>1</sup> The tax returns of a corporation the size of MPL are highly confidential, and the strictest of controls are placed on the dissemination of any portion of the returns. SSU submits that the probitive value of all of the requested tax return documents to the issues in this case is extremely limited for the following reasons:

(a) SSU is only one of a host of MPL subsidiaries included in the consolidated tax returns, so information directly related to SSU in the tax return documents is minimal;

(b) All of the book/tax differences applicable to SSU operations are already detailed in the C Schedules which are included in the MFRs, and the C Schedule workpapers have now been provided to OPC pursuant to an outstanding discovery request;

(c) OPC has yet to identify the specific relevant evidence to which the information sought bears a reasonably calculated causal connection. OPC only suggests by this discovery its interest in issues which the Commission or the courts have already conclusively decided, e.g. acquisition adjustments for utility transfers which took place by the transfer of shares of utility stock and proper regulatory treatment of a gain on the sale of utility assets when the utility recovered no depreciation on the sold assets from current customers. If OPC intends to raise these issues, OPC

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<sup>1</sup>SSU should not be foreclosed from making these arguments at this time rather than during the time allowed for objections. As stated above, OPC withdrew its consent to the inspection method SSU suggested for this case and which had consistently been employed in the past. SSU should therefore be held to no higher a standard of consistency than OPC is held to.



should be required to explain how the facts in the present case are at least facially different from past precedent;

(d) The income statements and balance sheets for all MPL subsidiaries are included in the form U-3A-2 reports which MPL files with the Securities Exchange Commission ("SEC"). Those reports are public record with the SEC, and copies of those reports have already been provided to OPC. Thus, to the extent OPC seeks book income and balance sheet figures for MPL subsidiaries from the tax returns, OPC already has the information in the U-3A-2 reports; and

(e) Standard practice in the industry among the larger utilities in the State of Florida is to allow OPC to inspect but not copy tax returns. OPC has followed that practice with SSU and MPL in the past. Now OPC has singled out SSU and MPL for disparate treatment based on what appears to be nothing other than another opportunity for harassment.

8. Upon weighing the possible probity of the documents which OPC demands copies of against MPL's interest in maintaining the integrity and security of its tax returns, the Commission should grant SSU's motion for a protective order. See e.g. Ernst & Ernst v. Reedus, 260 So.2d 258 (Fla. 3rd DCA 1972).

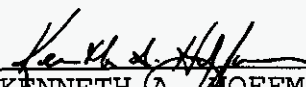
9. In consideration of the foregoing, SSU should not be compelled to respond further to OPC's Document Request No. 71, and OPC's Motion for More Time to File Testimony should be rejected. Even if SSU is required to produce copies of the tax return documents, OPC's request for additional time to file its testimony

should still be denied because no authority entitles a party to a comprehensive presumption of prejudice arising from each and every discovery dispute and because OPC has already twice inspected the tax return documents, so prejudice to OPC from withholding copies should be minimal.

10. For the reasons stated in SSU's prior responses to OPC's Motions, oral argument should not be granted.

WHEREFORE, for the foregoing reasons, SSU respectfully requests that OPC's Motion be denied and SSU's Motion for Protective Order is requested hereinabove be granted.

Respectfully submitted,

  
KENNETH A. HOFFMAN, ESQ.  
WILLIAM B. WILLINGHAM, ESQ.  
Rutledge, Ecenia, Underwood,  
Purnell & Hoffman, P.A.  
P. O. Box 551  
Tallahassee, FL 32302-0551  
(904) 681-6788

and

BRIAN P. ARMSTRONG, ESQ.  
MATTHEW FEIL, ESQ.  
Southern States Utilities, Inc.  
1000 Color Place  
Apopka, FL 32703  
(407) 880-0058

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing SSU's Response Citizens' Fifth Motion to Compel, Fifth Motion to Postpone Date for Filing Intervenor Testimony and SSU's Motion for Protective Order was furnished by U.S. Mail to the following this 29th day of September, 1995:

Lila Jaber, Esq.  
Division of Legal Services  
2540 Shumard Oak Boulevard  
Gerald L. Gunter Building  
Room 370  
Tallahassee, FL 32399-0850

Charles J. Beck, Esq.  
Office of Public Counsel  
111 W. Madison Street  
Room 812  
Tallahassee, FL 32314-5256

Michael B. Twomey, Esq.  
P. O. Box 5256  
Tallahassee, FL 32314-5256

Mr. W. Allen Case  
President  
Sugarmill Woods Civic Asso.  
91 Cypress Blvd., West  
Homasassa, FL 34446

Joseph Coriaci, Pres.  
Marco Island Civic Asso.  
413 S. Barfield Drive  
Marco Island, FL 33937

Mr. Morty Miller  
President  
Spring Hill Civic Asso., Inc.  
P. O. Box 3092  
Spring Hill, FL 34606

  
KENNETH A. HOFFMAN, ESQ.

EXHIBIT   A  

PAGE   1   OF   1  

SOUTHERN STATES UTILITIES, INC.  
RESPONSE TO REQUEST FOR PRODUCTION OF DOCUMENTS  
DOCKET NO.: 950495-WS

REQUESTED BY: OPC  
SET NO: 1  
DOCUMENT REQUEST NO: 71  
ISSUE DATE: 07/18/95  
WITNESS: BRUCE E. GANGNON  
RESPONDENT: Bruce E. Gangnon

DOCUMENT REQUEST: 71

Provide a copy of all Federal income tax returns for MPL for each of the years 1992, 1993, and 1994, including a complete copy of any and all schedules, workpapers, and consolidating schedules.

RESPONSE: 71

The consolidated federal income tax returns for MP&L, related workpapers and IRS correspondence will be made available for on-site review at the SSU offices in Apopka, FL with one week's notice or may be reviewed at the offices of Minnesota Power in Duluth, MN.

Since these items are confidential, they will be available for review but may not be copied.

EXHIBIT

B

PAGE

1 OF 3  
RECEIVED

SEP 15 1995

LEGAL DEPT.



JACK SHREVE  
PUBLIC COUNSEL

STATE OF FLORIDA  
OFFICE OF THE PUBLIC COUNSEL

c/o The Florida Legislature  
111 West Madison Street  
Room 812  
Tallahassee, Florida 32399-1400  
904-489-9330

September 13, 1995

Matt Feil, Esquire  
Southern States Utilities, Inc.  
1000 Color Place  
Apopka, FL 32703

VIA FAX AND MAIL

Re: Docket 950495-WS

Dear Matt:

I would like to make sure that our trip to your offices in Apopka next week goes as smoothly as possible. As we discussed on the phone last Friday, we will have seven people at your offices arriving on Monday, September 18, at 8:00 a.m. The purpose of our visit is to review all of the materials responsive to our requests for production of documents that you have said could only be produced in Apopka without undue burden.

The materials we would like to review include materials responsive to the following requests for production of documents:

- #38.
- #41. You have provided us a computer hook-up that is helpful in that it lists journal entries, but it provides little or no detail. Last week our analysts asked Judy Kimball to produce all journal entries and supporting workpapers for December, 1994, and January, 1995. Would you please have these materials available.
- #48. I understand the condensed operating statement summary budget variance analysis for the following dates has not yet been provided: January through September, 1992; November, 1992; January, 1993; November, 1993; January, 1994; and July through August, 1995. Would you please have these materials available in addition to those already provided.
- #53 and #54. Budgets for the years 1989 through 1993 have not yet been produced. Would you please have these materials available in addition to those already provided.

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EXHIBIT     B    PAGE     2     OF     3    

- #57.
- #63. Could we please set up a time to review the Price Waterhouse workpapers on either Monday, September 18, Tuesday, September 19, or Wednesday, September 20. I left a message to this effect on Morris Bencini's voice mail Tuesday morning.
- #70 and #71. I have left a message with Ann Casseaux to try to coordinate the review of these documents with staff. We would like to review these materials some time next week in Apopka.
- #91. You have asked if we would review the invoices and vouchers in stages. I propose that the first third of these materials be available at 8:00 a.m. Monday; we will finish the review of those materials by the end of the day. If you would provide the second third at 8:00 a.m. Tuesday and the final third at 8:00 a.m. Wednesday, we will finish the review at the end of each day.
- #93 and #94. I propose that we follow the same procedure outlined for the materials responsive to request #91. If you provide one third of the materials at the beginning of each day Monday through Wednesday, we will complete our review of the respective materials by the end of each day.
- #97.
- #143. All of the documents listed in your response to interrogatories 8, 9 and 10 should be available as responsive to this request for production of documents.

EXHIBIT     B    

PAGE     3     OF     3    

• #155.

Thank you. Please call if you have any questions or would like to discuss the matters further.

Sincerely,

*Charlie Beck*

Charles J. Beck  
Deputy Public Counsel

CJB:bsr

EXHIBIT

C

PAGE

1

OF

3MPL 1994 CONSOLIDATED RETURN

- ① Schedules 2, 23, 30, 34, 35, 36, 37, 38

MPL 1993 CONSOLIDATED RETURN

- ② Schedules 2, 7, 19, 26, 29, 30, 31, 32, 33

SSU INCOME TAX RETURN 1994FROM INDEX OF "K" SECTION WORKPAPERS

- ③ K, K-0, K-1.

SSU INCOME TAX RETURN 1993

- ④ Schedules 3, 8, 10

- ⑤ Form 1120

- ⑥ Notes to Return - 3 pages

- ⑦ FROM INDEX ~~OF~~ FOR SUBSIDIARIES - SSU

A (adjusting entries), B-<sup>3</sup>/<sub>6</sub>, B-4, B-8, B-12, B-14

B-17<sup>3</sup>/<sub>3</sub>, B-20, B-22, E-2, E-4, E-7, J, P, T

U-17, U-18



Eswein  
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5007

K HOFFMAN

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EXHIBIT

front of  
C

NA Form 1120

1. Sched 10 - Simon, Haim & Lerner (1994) PAGE 2 OF 3
2. Sched 11 - Time & Solviter (1994)
3. Sched 12 - Other assets & Liab (1994)
4. Sched 13 p. 3, 4 (M-1)
5. Sched 14 - defer gain
6. Sched 7 - Asset Acq.
7. Notes to for 94 & 95 returns (8 pages)
8. Book to tax T/B - 7 pages
9. C/R report - 18 pages
10. B-7 p. 1, 2 - Amortz of Acq.
11. B-3/1, 2, 3
12. B-3/9 VGU Acq Adj.
13. B-3/12
14. B-5/14 sale of VGU
15. B-8 - def. debits
16. B-8/6 - ~~deduct~~ Deduct prop.
17. B-8/6 - 2, 3, 4, 5, 6, 7 (Deduct & Collier)
18. B-8/7 & B-8/7-1, 2 (Mapping)
19. B-8/8 & B-8/1, 2
20. B-8/2-3 - vt useful 94 EAO15 20A. B-8/9 <sup>collier</sup> <sub>ret</sub>
21. B-14/1, 2 - Lobbying
22. B-17 penalties
23. B-19/1, 2 sub. allocat.
23. B-22 POZ prepared stock
24. B-22/2 (B-22/2)
25. B-23/1 note & can corp.
26. I, I-1, I-2 elimination (over)

27. P-4 Sale of Darbyville land

28. P-5 Seaboard Abund.

29. P-5/1, 2, 3, 4, 5

30. P-5/6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16 Seaboard

31. B-25 Felish grants