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October 20, 1995

ORIGINAL  
COPY  
HAND DELIVERY

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

Re: Docket No. 950495-WS

Dear Ms. Bayo:

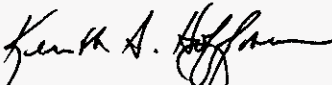
Enclosed herewith for filing in the above-referenced docket on behalf of Southern States Utilities, Inc. ("SSU") are the following documents:

- 10384-95
1. Original and fifteen copies of SSU's Response to Citizens' Eighth Motion to Compel and Eighth Motion to Postpone Date for Filing Intervenor Testimony; and
  - 10385-96 2. An original and a copy of Southern States Utilities, Inc.'s Notice of Service of First Set of Interrogatories to Office of Public Counsel.

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

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TALLAHASSEE, FLORIDA

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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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, Highlands, Lake, Lee, )  
Marion Martin, Nassau, Orange, )  
Osceola, Pasco, Putnam, Seminole, )  
St. Johns, St. Lucie, Volusia, )  
and Washington Counties. )

Docket No. 950025-MS

Filed: October 20, 1995

SSU'S RESPONSE TO CITIZENS' EIGHTH MOTION  
TO COMPEL AND EIGHTH MOTION TO POSTPONE DATE FOR FILING  
INTERVENOR TESTIMONY

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' Eighth Motion to Compel and Eighth Motion to Postpone Date for Filing Intervenor Testimony (the "Motion") filed by the Office of Public Counsel ("OPC") on October 13, 1995.<sup>1</sup> In support of this Response, SSU states as follows:

1. Compelling SSU to provide responses to Interrogatory Nos. 146, 148, 149, 159, 161, 162, 165, 166, 166, 167, 173, 177, 180 and Document Request No. 182 is unnecessary and moot because SSU's response to said discovery requests have already been served. With

<sup>1</sup> On page 2 of OPC's Motion, OPC mistakenly identifies the discovery requests which are the subject of the Motion as being included in OPC's First Set of Interrogatories and First Set of Requests for Production of Documents. All of the interrogatories and document requests which are the subject of this Motion are from OPC's Fifth Set of Interrogatories and OPC's Fifth Set of Requests for Production of Documents, respectively.

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the exception of the responses to Interrogatories Nos. 159, 161, and 180 and Document Request No. 182, the aforesaid responses were served on October 17, 1995. The responses to Interrogatories Nos. 159, 160 and 180 and Document Request No. 182 were served on October 18.

2. SSU submits that compelling responses to the remaining discovery requests mentioned in OPC's Motion is unnecessary as SSU will make every effort to serve said responses by October 25.

3. In support of its request to postpone the filing date for its testimony, OPC essentially argues that OPC's entire case is presumptively prejudiced by so much as one dilatory response to discovery. SSU submits that no such comprehensive presumption of prejudice exists in the law. OPC cites no authority, and SSU is aware of no authority, supporting OPC's position. SSU submits that it is OPC's burden to prove that it is prejudiced in fact by any dilatory discovery responses. Any prejudice a party suffers from a late discovery response depends on the facts and circumstances of each discovery request and each case, in consideration of the following factors: the timing of the request, the number of days by which a response is late, the scope and subject matter of the request, the relevance of the request to the issues in the proceeding, whether the information requested has been provided through other means or by other discovery responses, and the number of days until prefiled testimony is due. SSU notes that by Order No. PSC-95-1258-PCO-WS, issued October 13, 1995, in this docket, the Prehearing Officer rejected the same arguments OPC makes in the

instant Motion.

4. OPC has failed to show that it has been prejudiced by any late SSU responses; instead OPC relies on a presumption which does not exist in the law. Furthermore, SSU submits OPC has not been prejudiced so as to warrant an extension of the filing date for all or any portion of OPC's prefiled testimony. OPC's testimony is not due until November 20, a month away. Including subparts, OPC discovery requests which SSU has already responded to are several hundred in number. OPC cannot claim comprehensive prejudice by a minimal number of responses which are a few days late.

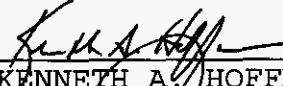
5. OPC's Motion fails to mention SSU's responsiveness to OPC requests made outside formal discovery procedures. On several occasions, OPC has telephoned SSU seeking technical assistance with computer disks SSU provided OPC. SSU has promptly responded to such OPC requests. Recently, OPC requested by telephone that SSU make a revision to one such disk, which SSU agreed to make in less than a week. Further, when OPC conducted an inspection of documents subject to discovery requests at SSU's Apopka offices on the week of September 18, 1995, OPC requested a number of additional documents, a significant portion of which were not within the scope of outstanding discovery. SSU provided OPC with a large number of these documents by mail on October 16, 1995, and SSU intends to ship the remainder to OPC in the next few days.

6. SSU also agreed to ship three copies of certain documents OPC inspected on site the week of September 18 to accommodate OPC staff and consultants residing out of state.

7. OPC's Motion fails to mention the facts surrounding SSU's production of the tax return documents requested by OPC's Document Request Nos. 70 and 71. As stated in SSU's September 29 Response to OPC's Fifth Motion to Compel, SSU produced the tax return documents requested as well as an individual with knowledge of those documents in Apopka with a two-business-day turnaround despite the fact that SSU's response to OPC's Document Request Nos. 70 and 71 informed OPC that at least one week's notice would be needed to produce those documents and OPC's acknowledgment of the required advance notice.

WHEREFORE, in consideration of the foregoing, Southern States Utilities, Inc. requests that the Commission deny the Citizens' Seventh Motion to Compel and Seventh Motion to Postpone Date for Filing Intervenor Testimony.

Respectfully submitted,

  
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and

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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 to Citizens' Eighth Motion to Compel and Eighth Motion to Postpone Date for Filing Intervenor Testimony was furnished by U.S. Mail to the following this 20th day of October, 1995:

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