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ORIGINAL
FILE COPY

June 12, 1992

Steve Tribble, Director
Division of Records and Reporting
Florida Public Service Commission
101 East Gaines Street
Tallahassee, FL 32399-0850

Re: Docket No. 920199-WS


Dear Mr. Tribble:

Enclosed for filing in the above-captioned proceeding on behalf of the Citizens of the State of Florida are the original and 15 copies of Citizens' Response to Southern States' Motion of June 10, 1992.


Please indicate the time and date of receipt on the enclosed duplicate of this letter and return it to our office.

- ACK
- AFA 1
- APP _____
- CAF _____
- CMU _____
- CTR Enclosure
- EAG _____
- LEG 1
- LIN 3
- OPC _____
- RCH _____
- SEC 1
- WAS 1
- OTR _____

Sincerely,


Harold McLean
Associate Public Counsel

RECEIVED & FILED


FPSC-BUREAU OF RECORDS

DOCUMENT NUMBER-DATE

06164 JUN 12 1992

FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

Application of Southern States)
Utilities, Inc. for increased)
water and sewer rates)

Docket No. 920199-WS
Filed: June 12, 1992

CITIZEN'S RESPONSE TO SOUTHERN STATES'
MOTION OF JUNE 10, 1992

The Citizens of the State of Florida (Citizens) by and through JACK SHREVE, Public Counsel, respond to the motion for protective order filed by Southern States Utilities Inc. (SSU) on June 10, 1992 as follows:

1. An action is commenced when the initial pleading is filed. Rule 1.050, Florida Rules of Civil Procedure provides:

Every action of a civil nature shall be deemed commenced when the complaint or petition is filed.

SSU filed an application for rate relief¹ on May 11, 1992, which commenced an action

¹ On March 2, 1992, SSU filed a request for approval of a test year. Whether this act commenced the action is not argued here because the Citizens' discovery was filed long after the request and after the application was filed. By arguing that the action commenced upon the filing of the application, the Citizens do not waive any argument that the action commenced earlier, upon the filing of the test year request. A notable practitioner of that theory is the staff of the commission. In docket 920310-TL, Centel's current rate case, the staff served discovery on the company on the 5th of May 1992,

in which the commission, the applicant, and the Citizens have participated. In Cook v. Walgreen Co., 399 So 2d 523 (Fla. 2nd DCA, 1981) The District court noted the holding of the Florida Supreme Court on the point:

The Florida Supreme Court has discussed the requirements of filing, deciding that a pleading is deemed filed when it is delivered to and received by the proper officer for that purpose. Bituminous Casualty Cor. v. Clements, 3 So 2d 865 (Fla. 1941)

2. The adequacy of the filing in no way determines whether the action has commenced: in fact, where (as here) an amendment curing the MFR deficiencies is to be filed, the amendment relates back to the initial filing. See Rule 1.190(c) Fla. R. Civ.

P. which provides:

When the claim or defense asserted in the amended pleading arose out of the conduct, transaction or occurrence set forth *or attempted to be set forth* in the original pleading, the amendment *shall relate back* to the date of the original pleading. (italics added)

Thus when and if SSU amends its original filing, it will relate back to the original filing which was made on May 11, 1992, the time at which the action commenced.

3. While it is true that SSU cannot avail itself of the strict time constraints placed

long before Centel's intended date for MFR filing of June 24, 1992. Were SSU's position adopted by the commission, the commission would not only curtail rights to which the Citizens are entitled, it would hamstring its staff as well!

upon the commission by statute until its filing is complete², its failure to file adequately does not insulate SSU from the scrutiny afforded by discovery which is permitted by Florida Rules of Civil Procedure and by the rules of this commission. Both Rule 1.340 (interrogatories) and Rule 1.350, Fla. R. Civ. P. provide for discovery after commencement of the action. The adequacy of SSU's filing is a matter well beyond the control of the Citizens, and squarely within the control of SSU and its counsel.

4. Whether SSU's in-house personnel are absorbed in other tasks is a contingency to which SSU should have given adequate attention before they filed deficient MFR's which omitted (among other things) prefiled testimony required by Rule 25-30.430(3)(a), Florida Administrative Code.

5. The commission has no authority to order the Public Counsel to refrain from filing discovery; the commission is a creature of statute, devoid of any equitable jurisdiction from which any injunctive relief might issue.

6. Because the commission has for years tacitly waived numerical limitations placed upon interrogatories, the Citizens regard SSU's argument thereupon offered frivolously and choose not to respond thereto. The Citizens' June 2nd motion on the issue was offered in anticipation of that unfortunate development.

² Which is the focus of Rule 25-30.436(g), Florida Administrative Code

7. By filing the subject motion in the Docket, SSU acknowledges that the action has commenced. In seeking relief from the commission, SSU implicitly acknowledges an action in which relief could be afforded and implicitly acknowledges that the action has commenced, its various arguments to the contrary notwithstanding. SSU is apparently unpersuaded by its own arguments; the commission should accord similar weight thereto.

WHEREFORE, the Citizens request the subject motion be denied.

Respectfully submitted,



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Associate Public Counsel

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Attorney for the Citizens
of the State of Florida

**CERTIFICATE OF SERVICE
DOCKET NO. 920199-WS**

I HEREBY CERTIFY that a correct copy of the foregoing has been furnished by U.S. Mail or hand-delivery to the following parties on this 12th day of June, 1992.

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/s/
Harold McLean
Associate Public Counsel