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ORIGINAL
FILE COPY

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September 18, 1995

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

Re: Docket No. 950495-WS

Dear Ms. Bayo:

Enclosed for filing in the above-referenced docket are the original and 15 copies of Citizens' Fourth Motion to Compel and Fourth Motion to Postpone Date for Filing Intervenor Testimony.

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

Sincerely, *Harold McLean* for

Harold McLean
Associate Public Counsel

- ACK 1
- AFA 3
- APP HM:bsr
- CAF Enclosures
- CMU
- CTR
- EAG
- LEG 1
- LIN 5
- OPC
- RCH
- SEC 1
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- OTH

SEARCHED _____
SERIALIZED _____
INDEXED _____
FILED _____
SEP 19 1995
FBI - TAMPA

DOCUMENT NUMBER-DATE
09187 SEP 18 95
FPSC-RECORDS/REPORTING

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: September 18, 1995

CITIZENS' FOURTH MOTION TO COMPEL AND FOURTH MOTION TO POSTPONE DATE FOR FILING INTERVENOR TESTIMONY

The Citizens of Florida ("Citizens"), by and through JACK SHREVE, Public Counsel, move the Commission to compel Southern States Utilities, Inc. ("SSU") to immediately and fully answer the Citizens' interrogatories numbered 68, and 81; and to immediately produce each document responsive to Citizens' requests for production of documents numbered 121, 144, and 154; the Citizens move the commission to postpone, on a day-for-day basis, the filing date for intervenor testimony for each day SSU fails to satisfy these discovery requests.

As grounds for the foregoing motions, the Citizens say:

MOTION TO COMPEL:

- 1. The Citizens filed a first set of requests for production of documents and first set of interrogatories on Tuesday, July 18, 1995. Interrogatories 68 and 81 were included therein as were Requests for production of documents Nos. 121, 144, and 154.

DOCUMENT NUMBER-DATE
09187 SEP 18 95 546
FPSC-RECORDS/REPORTING

2. SSU furnished incomplete responses to the foregoing discovery; the instant motions address their various shortcomings.

3. Interrogatory 68

- (a) Provide the annual salary for 1994 and as budgeted for 1995 and 1996 for any person employed by MPL which is testifying in this case and/or which has charged time to the Company during the historic test year 1994.
- (b) For each person identified in (a), please reconcile the hourly rate charged to the Company compared to the equivalent hourly rate indicated by their salary.

SSU responded as follows:

- (a) Minnesota Power believes that the individual employee salary information is confidential and that sufficient information is provided with the billings to the Company to support the charges for services performed.
- (b) See answer to (a).

The gist of the answer is a suggestion that the Citizens should to look to the judgement of SSU, an adversary in this proceeding, as to whether the information furnished is adequate. It is statement to this commission that SSU shall sit as its own judge in the matter. SSU is under an obligation to either answer the interrogatory or to object to it. The time for objection is long passed, even by SSU's generous view of time. An ambiguous hint that the information might be confidential is not a legally credible claim of confidentiality for which this commission has carefully established procedures to assert.

The Citizens believe that the rates charged to the ratepayers for the participation in this case of the enumerated individuals

are excessive when compared with the compensation provided to them in their other duties; the Citizens will move that matter established in the absence of compliance with their discovery which is reasonably designed to elicit information concerning the issue.

No timely or credible objection having been raised the full response to interrogatory 68 should be provided immediately.

4. Interrogatory 81

List all senior executives (vice presidents and above) of MPL, their title, their annual salaries, and their annual benefits, and a description of the services they provide to the Company. Provide this information for the years 1993, 1994, and 1995.

SSU Responded as follows:

SSU provided the names, titles, and services performed by the executives. However to the request for salaries they said:

Minnesota Power believes that the individual employee salary information is confidential and that sufficient information is provided with the billings to the Company to support the charges for services performed.

The theme that SSU should sit as its own judge recurs yet again. The sufficiency of the information provided is a matter best decided by the commission upon objection by SSU, an objection which is noticeably absent from their response. SSU's off-handed reference to confidentiality is erroneous not only from the perspective of its sad short comings vis-a-vie the commission's established procedures for pleading confidentiality, but from this as well: Minnesota Power is a publically held corporation pervasively regulated by Federal and state authorities. It should

not be a company awash in secrets.

The Citizens believe that the contribution to SSU of the enumerated executives is de minimis and falls far short of the compensation for which SSU customers might become liable. The Citizens believe that the alleged services are but a pretense to shift costs of MPL to its subsidiary, which should in fact be accounted for as return on investment. The Citizens will move that matter established in the absence of full compliance with interrogatory 81 which is reasonably designed to elicit information probative of the issue.

No timely or credible objection having been raised, the full answer to interrogatory 81 should be provided immediately.

5. Document Request 121

Please provide any reports, studies, or other documents in the Company's custody or control which address the subject of economies of scale of the Company's storage, treatment, collection, and distribution systems, or the storage, treatment, collection and distribution systems water and sewer companies in general.

SSU responded as follows:

"None available."

Yet, on page 17 of its August 29th objections, the Company stated:

This document request solicits fact work product prepared in anticipation of litigation and is therefore exempt from discovery pursuant to Rule 1.280(b)(3), Florida Rules of Civil Procedure, until OPC make (sic) the requisite showing of need or until the requested materials form the basis for the testimony of an expert testifying at the hearing.

SSU's responses appear to impeach the candor of its discovery compliance. SSU's objection clearly admits the existence of such a document while its response claims that none is available. Both of SSU's statements cannot be true, without the benefit of liberal obfuscatory spin on the words chosen.

The impermissible variety in the answers chosen by SSU should operate to waive any objection to the request for production. That the matter is work product is no more likely than its nonexistence. The Citizens believe, with good cause, that both are false. That is, the contrary to SSU's assertions, the document exists and it isn't work product.

The Citizens are entitled to the document forthwith.

Document Request 144

Provide a copy of all internal memoranda, reports, or studies which address how rain and/or weather has affected the Company's revenues during the years 1992, 1993, and 1994.

SSU responded as follows:

The Company's response to Citizens First Request for the Production of Documents No. 24 includes a copy of Dr. Whitcomb's report to SSU on "Financial Risk and Water Conserving Rate Structures", dated April 1995 (see Appendix DR24-A). Chapter 2 of this report discusses the correlation between water use, weather, and revenue. No other statistical analyses have been performed to correlate rainfall and revenues of 1992, 1993, and 1994. (Emphasis added.)

While SSU's answer is restricted to "statistical analyses" the Citizens request for production of documents is not. If any "internal memoranda, reports, or studies which address how rain

and/or weather has affected the Company's revenues during the years 1992, 1993, and 1994" exist, the Citizens are entitled to each one.

There has been neither timely nor credible objection lodged against production of the documents in question, there has been only partial and off point compliance. The Citizens are entitled to either have the documents or to have SSU's assertion that they do not exist.

Document Request 154

For purposes of this request, please refer to the Company's response to OPC's Interrogatory 168 (c) and (d) in Docket No. 920655-WS. Please provide a copy of the four documents identified in this response.

SSU responded as follows:

Please refer to the copies of OPC Interrogatory 168 and Document Request No. 85 from Docket No. 920655-WS which are attached as Appendix DR154-A. Company counsel has advised that the documents requested are covered by the Attorney-client privilege and thus are not subject to disclosure.

Although SSU's response appears to be an objection, its time for objection has run, and it is not among the objections filed on August 29. Any objection SSU might have had to this request is waived.

Even were it not waived, privilege is not credibly asserted: two of the documents are anonymous and there is no indication to whom the documents were distributed; one is authored by an MPL executive, not an attorney, and there is no indication to whom the document was distributed; the last one was copied to a nonlawyer and any privilege thus waived. (the document list provided by SSU

is attached as Exhibit 'A')

None of the documents that were prepared in connection with the instant case, none was prepared in contemplation of litigation. The assertion is but another attempt to keep secret matters which should be considered by the commission; the assertion is but another attempt to establish SSU as its own judge as to whether the documents are actually subject to a privilege.

No timely or credible objection having been raised, the identified documents should be produced forthwith.

MOTION TO POSTPONE

6. Discovery is a process where the response to a discovery request is frequently the basis for further discovery focusing more narrowly on an issue. By furnishing incomplete responses to discovery on its due date, the process of building on that discovery and preparing follow-up questions is irrevocably delayed. Every day lost at this point takes a day away from the Citizens' ability to prepare testimony responding to SSU's case.

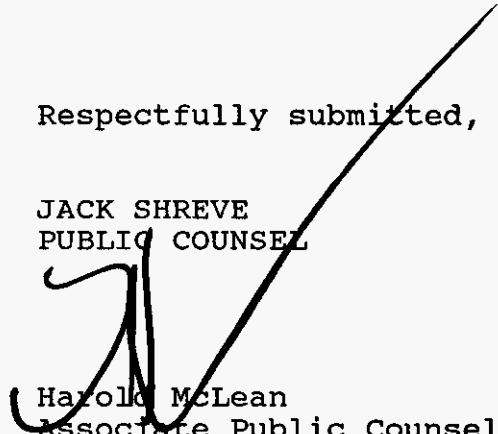
Every day of delay diminishes the value of the Citizens' point of entry into the administrative process.

WHEREFORE, the Citizens move the Commission to order SSU to immediately answer the Citizens' interrogatories numbered 68 and 81; and to immediately produce each document responsive to Citizens' requests for production of documents numbered 121, 144, and 154; and the Citizens move the commission to postpone, on a day-for-day basis, the filing date for intervenor testimony until

SSU fully satisfies these discovery requests. Intervenor testimony is now tentatively scheduled for November 20, 1995. The day-for-day postponement should be determined using that date as a starting point.

Respectfully submitted,

JACK SHREVE
PUBLIC COUNSEL



Harold McLean
Associate Public Counsel

Office of Public Counsel
c/o The Florida Legislature
111 West Madison Street
Room 812
Tallahassee, FL 32399-1400

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 parties on this 18th day of September, 1995.

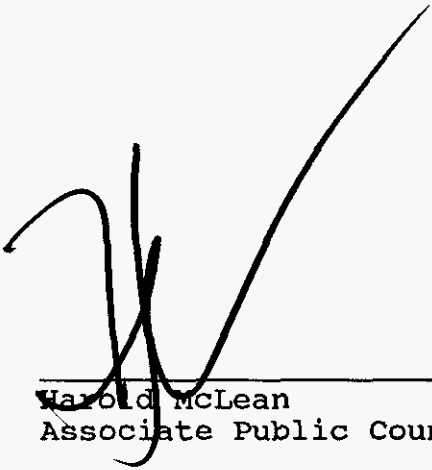
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Harold McLean
Associate Public Counsel

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

REQUESTED BY: OPC
SET NO: 1
DOCUMENT REQUEST NO: 154
ISSUE DATE: 07/18/95
WITNESS: UNDETERMINED
RESPONDENT: Karen Shofter

DOCUMENT REQUEST: 154

For purposes of this request, please refer to the Company's response to OPC's Interrogatory 168 (c) and (d) in Docket No. 920655-WS. Please provide a copy of the four documents identified in this response.

RESPONSE: 154

Please refer to the copies of OPC Interrogatory No. 168 and Document Request No. 85 from Docket No. 920655-WS which are attached as Appendix DR154-A. Company counsel has advised that the documents requested are covered by the attorney-client privilege and thus are not subject to disclosure.

SOUTHERN STATES UTILITIES, INC.
(MARCO ISLAND)
RESPONSE TO INTERROGATORIES
DOCKET NO. 920655-WS

REQUESTED BY: OPC
SET NO.: 5
INTERROGATORY NO.: 168
ISSUE DATE: Jan 29, 1993
PREPARED BY: Judy Kimball

INTERROGATORY: 168

For purposes of this request, please refer to the Company's response to OPC's Document Request 85.

(a) Please describe the efforts undertaken by the Company to obtain the June 1988 Report prepared by Price Waterhouse.

(b) Was Price Waterhouse contacted to see if they had a copy of the study? If not why not.

(c) Please identify the four documents which the Company alleges are attorney-client privileged.

(d) For each document identified in response to (b), please indicate who prepared the documents, the date of the document, and to whom the document was distributed.

RESPONSE: 168

(a) Through a comprehensive search of the archives at Minnesota Power, the June 1988 report prepared by Price Waterhouse has been located. The report was provided to Public Counsel on February 25, 1993.

(b) No. The report was archived in the Minnesota Power audit department which was able to locate the report. Incurring an expense of a Price Waterhouse search for the document would have been a last resort.

(c & d) 1. Document marked "Private & Confidential - Attorney/Client Privilege" and "Deltona Issues" dated May 15, 1989 authored by "JRM" (Jack R. McDonald, a Minnesota Power executive).

2. Document marked "Confidential Attorney - Client Privilege" and "Settlement Possibilities" dated October 19, 1989. Author not indicated. Distribution not indicated.

3. Document marked "Confidential Attorney Client Privilege" and "Settlement Possibilities" dated October 25, 1989. Author not indicated. Distribution not indicated.

4. Letter dated October 23, 1989 from Ronald L. Sorenson, Esq. (Topeka Group Incorporated at Briggs and Morgan) to B. Kenneth Gatlin, Esq. (Topeka Group Incorporated co-counsel), copied to Jack R. McDonald, Minnesota Power executive and Topeka co-counsel, David Forsberg, Esq. and Barry Davidson, Esq.

SOUTHERN STATES UTILITIES, INC.
MARCO ISLAND
RESPONSE TO REQUEST FOR PRODUCTION OF DOCUMENTS
DOCKET NO. 920655-WS

REQUESTED BY:	OPC
SET NO.:	4
DOCUMENT REQUEST NO.:	85
ISSUE DATE:	Dec 10, 1992
PREPARED BY:	Donnie Crandell

DOCUMENT REQUEST: 85

Please provide any and all documents in the Company's possession, custody, or control which discusses, analyzes, or addresses the terms of the settlement agreement between Topeka and Deltona Corporation, including but not limited to analyses, studies, reports, memorandum, etc. prepared after the execution of the settlement agreement.

RESPONSE: 85

Copies of the requested documents are attached as Appendix 85-A. To date, we are unable to locate the June 1988 Report issued by Price Waterhouse which is referred to in the September 1989 report provided herewith. Company counsel has advised that four documents covered by the attorney-client privilege are not to be disclosed.