

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

Docket No. 950495-WS

Filed: October 25, 1995

**ORIGINAL
FILE COPY**

SSU'S RESPONSE TO CITIZENS' NINTH MOTION
TO COMPEL AND NINTH 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' Ninth Motion to Compel and Ninth Motion to Postpone Date for Filing Intervenor Testimony (the "Motion") filed by the Office of Public Counsel ("OPC") on October 18, 1995. In support of this Response, SSU states as follows:

1. Compelling SSU to provide responses to Interrogatory Nos. 181-185, 187-192, 194 and 198 and Document Requests Nos. 185, 187 and 191 is unnecessary and moot because SSU's response to said discovery requests have already been served. With the exception of the responses to Interrogatories Nos. 181, 187, 192 and 198 and Document Requests Nos. 185, 186 and 191, the aforesaid responses were served on October 17, 1995. The responses to Interrogatories Nos. 192 and 198 and Document Request No. 191 were served on October 18. The responses to Interrogatory No. 187 was served on

DOCUMENT NUMBER-DATE

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October 19, and the responses to Interrogatory No. 181 and Document Request No. 185 were served on October 23.

2. SSU submits that compelling responses to the one remaining discovery request mentioned in OPC's Motion, Document Request No. 186, is unnecessary as SSU will make every effort to serve said response on the date of this Response.

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, some three weeks 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 late responses.

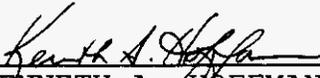
5. OPC's Motion fails to mention SSU's responsiveness to OPC requests made outside formal discovery procedures. On several occasions, OPC has telephoned SSU seeking technical assistance with computer disks SSU provided OPC. SSU has promptly responded to such OPC requests. Recently, OPC requested by telephone that SSU make a revision to one such disk, and SSU provided the disk with revisions to OPC 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, as of this writing, only one response to these requests is outstanding.

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 the fact that OPC previously acknowledged the required advance notice.

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

Respectfully submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing SSU's Response to Citizens' Ninth Motion to Compel and Ninth Motion to Postpone Date for Filing Intervenor Testimony was furnished by U.S. Mail to the following this 25th day of October, 1995:

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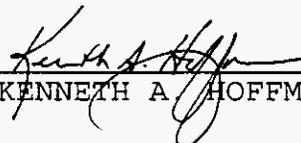
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