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ORIGINAL
FILE COPY

July 10, 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' Amended Motion of July 2, 1992.

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

- ACK
- AFA
- APP
- CAF
- CMJ
- CTR
- EAG
- LEG 1
- LIN 4
- OPC
- RCH
- SEC 1
- WAS
- OTH

Enclosure

Sincerely,

Harold McLean
Associate Public Counsel

RECEIVED & FILED

FPSC-BUREAU OF RECORDS

DOCUMENT NUMBER-DATE

07540 JUL 10 1992

FPSC-RECORDS/REPORTS

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

Docket No. 920199-WS

Filed: July 10, 1992

**CITIZEN'S RESPONSE TO SOUTHERN STATES'
AMENDED MOTION OF JULY 2, 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 July 2, 1992, (which seeks relief from certain discovery filed by the Citizens) as follows:

1. NUMERICAL RESTRICTION ON INTERROGATORIES

Without alleged or proven reason, SSU simultaneously filed for rate relief for one hundred and twenty-seven (127) water and sewer systems in the State of Florida, each and any of which could have (and the Citizens say *should* have) been filed separately. Had each been filed separately, the Citizens would have been entitled to propound 30 interrogatories for each of the systems, or 3810 interrogatories. The Citizens believe, and urge the Commission to find, that SSU's suggested 200--or 1.5748 per system--is too modest an allowance to serve the interests of due process.

2. NUMERICAL RESTRICTION ON REQUESTS FOR PRODUCTION OF DOCUMENTS

With respect to SSU's request that the Citizens be restricted to 100 request for production of documents: were the Commission to so hold, the Citizens would be limited to 0.7874 requests for production for each system which might seem, even to the most casual of observers, inadequate.

3. PRE-1989 HISTORICAL INFORMATION

SSU would have the commission disallow the discovery filed by the Citizens because "the Commission¹ has approved Southern States' use of a historical test year ending December 31, 1992 in its Application." Thus SSU "submits that only these historic 1991 costs are at issue in this docket." SSU's understanding of test year approval is a misunderstanding.

Test year approval by the chairman (and, where appropriate, by the full commission) is interim in nature; whether the utility-chosen test year is appropriate is a live issue throughout the case, the chairman's earlier approval notwithstanding.

The commission considered the effect of test year approval in Docket No. 910980-TL, the most recent United Telephone Company of Florida rate case. Upon the Citizens' petition for a 120.57² hearing, the citizens received this comfort from the commission in Order 25484:

¹ actually, it was the chairman.

² Section 120.57(1) Florida Statutes, (1991)

The Commission's initial approval of a test year is an *interim decision only*, subject to the Commission's final decision approving or disapproving the use of a particular test year in the ratemaking proceeding. Accordingly, we find it appropriate to deny Public Counsel's request for a hearing on this matter and, there, grant United's Motion to Dismiss. (italics added)

Id. at 2

To illuminate its rationale even further, the commission said:

The test year mechanism is simply a Commission tool or technique to make rate setting reflective of known future conditions. [citation omitted] The Commission's acceptance of United's proposed test year is interim in nature. *It is subject to this Commission's review and modification in the rate case proper.* (underscoring in original; italics added)

Id. at 3

Because the appropriateness of the test year remains a live issue throughout the case, to hold forth the chairman's *interim* approval of a test year as a defense to the Citizens' discovery is without legal or practical meaning. The Citizens intend to discover whether the utility's choice of a historical test year ending December 31, 1992 is appropriate. The discovery to which SSU objects is designed to adduce evidence which is relevant to that issue, and/or is reasonably calculated to lead to evidence which is relevant to that issue. The Citizens represent that the appropriateness of the test year will be an identified and contested issue in this case.

SSU's objection based on the volume of discovery sounds a familiar theme raised by SSU at its every opportunity. Forgetting that it was their choice to simultaneously file 127 systems--each and any of which could have been filed separately, some under staff

assistance and some under the PAA procedure--they complain that their resources are overly taxed by compliance with the Citizens' discovery. Having strained the resources of staff, commission, and Citizens, SSU should have calculated that their own resources might be strained as well. Moreover, they might have expected discovery in a volume proportional to the amount in controversy: eight million six hundred thousand dollars.

4. PROJECTIONS BEYOND THE HISTORIC TEST YEAR

Here, SSU labors under the same misunderstanding with respect to the interim approval of the test year as with the pre test year data. The fallacy of that reasoning is set forth above, and is not repeated here. It should suffice to say that since the appropriateness of the test year is at issue and is to be decided in the rate case proper, matters probative of that issue are securely within the scope of permissible discovery.

5. REPETITIOUS DOCUMENT REQUESTS

Requests for documents nos. 92 through 114, inclusive, are voluntarily withdrawn.

6. OTHER SUBSTANTIVE OBJECTIONS

Interrogatory Nos. 1 and 2

(1) Please indicate the dates and the nature of all communications with the staff of the Florida Public Service Commission (staff) which relate in any way to this docket, to include but not be limited to, discussions concerning filing date, rate design issues, presentation of accounting information, or MFR's that could or should be waived.

(2) Please provide the details of any advice which relates to the filing, preparation, and/or presentation of this rate case provided by staff, and state whether the company followed that advice.

Each of the foregoing questions is designed to either discover or lead to the

discovery of the following information:

- a. the various filing dates which might have been considered by the utility and/or by the staff and whether the choice of filing dates was determined based upon advantage to SSU, administrative convenience to staff, advantage to the Citizens, or any combination thereof, and to what extent, if any, the staff may have participated in related strategic choices made by SSU upon which staff may ultimately render an opinion to the commission;
- b. the various rate design plans which might have been considered by the utility and/or by the staff and whether the choice of rate design(s) requested was determined based upon advantage to the SSU, administrative convenience to staff, advantage of the Citizens, or any combination thereof, and to what extent, if any, the staff may have participated in related strategic choices made by SSU upon which staff may ultimately render an opinion to the commission;
- c. the various presentations of accounting information (including choice of consultants) the choice of which may have been made upon the basis of advantage to SSU, administrative advantage to the staff, advantage to the Citizens, or any combination thereof; and to what extent, if any, the staff may have participated in related strategic choices made by SSU upon which staff may ultimately render an opinion to the commission;
- d. Whether SSU should seek processing of its case through the commission's PAA procedure; whether the choice was based upon advantage to SSU, administrative advantage to the staff, advantage to the Citizens, or any combination thereof; and to what extent, if any, the staff may have participated in related strategic choices made by SSU upon which staff may ultimately render an opinion to the commission;
- e. Whether waiver of any provision of the commission's minimum filing requirements was to be considered, whether the waiver, if sought, was sought to serve advantage to SSU, administrative advantage to the staff, advantage to the Citizens, or any combination thereof; and to what extent, if any, the staff may have participated in related strategic choices made by SSU upon which staff may ultimately render an opinion to the commission;
- f. The extent to which, if any, the Citizens should allocate limited public resources to take issue with choices ostensibly made by the utility which were either opposed by, acquiesced to, endorsed by, suggested by, or required by the staff which will ultimately take substantive positions in this docket and render advice upon utility choices to the Commission itself.

While SSU alleges that:

. . . it would be unduly burdensome and time-consuming for SSU to attempt to respond to such requests [interrogatories 1 and 2] since SSU's rate case efforts are *truly* 'total company' efforts (italics supplied),

the law of Florida requires more than the bare conclusory statements regarding the consequences of discovery to a party. A similar situation was addressed in First City Developments of Florida, Inc. v. Hallmark of Hollywood Condominium Association, Inc.

545 So 2d 503 (Fla. 4th DCA, 1989) where the district court held:

Lastly, we turn our attention to petitioners' objections that some of the discovery sought was 'overly broad' or 'burdensome'. Such objections, standing alone would not constitute a basis for granting certiorari relief. (Citation omitted) More importantly, such words of art have little meaning without substantive support. Is this objection raised because petitioners would be required to produce a railroad boxcar full of documents, or are they merely objecting to the production of a half-inch thick file folder? Since the trial court has to consider petitioners' other objections, *it is incumbent upon petitioners to quantify for the trial court the manner in which such discovery might be overly broad or burdensome. They must be able to show the volume of documents, or the number of man-hours required in their production, or some other quantitative factor that would make it so. (italics added)*

Id. at 503

SSU makes no attempt to quantify the words of art, and thus provides nothing from which the commission can find that the discovery improper.

Moreover, SSU's assertion that information concerning the contacts between SSU and the staff is too voluminous and burdensome to identify or disclose suggests greater relevance and import to the information than even the Citizens had previously inferred.

Interrogatory 139

(139) Provide the following information for each of the company's affiliates (including parent companies) and subsidiaries for each of the years 1989, 1990, and 1991.

- a. average number of employees;
- b. average assets;
- c. total operating revenue;
- d. total nonoperating revenue;
- e. total operating expenses, excluding state and federal income taxes;
- f. total state and federal income taxes;
- g. average number of customers;
- h. ERCs;
- i. average gross plant; and
- j. average net plant.

The Company states that no common costs from Topeka or Minnesota Power and Light Company are allocated to Southern States. OPC has the right to determine:

- a. whether common costs from the parent companies (Topeka and Minnesota Power and Light Company) are or are not in fact allocated to Southern States;
- b. whether common costs from Minnesota Power and Light Company should be allocated to Southern States even if common costs are not allocated as alleged by the Company;
- c. whether "direct charges" from Topeka and Minnesota Power and Light Company are in fact directly charged as opposed to allocated. OPC believes that costs are sometimes claimed to be "directly charged" because this terminology tends to create less controversy; yet, the reality is that the costs are effectively allocated. For these reasons the information requested is relevant. Furthermore, the size and operations of the Company's affiliates are relevant for purposes of testing the reasonableness of the costs

which are "directly charged" from Minnesota Power and Light Company to Southern States and MPL and Topeka's other affiliates.

Interrogatory Nos. 163, 164, 168, 223; POD 86

Each of the above interrogatories/POD(s) is voluntarily withdrawn.

Interrogatory Nos. 171-174

(171) Provide the following information for the company (parent only) for the years 1988, 1989, 1990, and 1991:

Common Equity:

Common Stock

Retained Earnings

Preferred Stock

Long-Term Debt (excluding current maturities on long-term debt)

Long-Term Debt-current maturities

Long-Term-Debt--other (itemize)

Short-Term Debt

(172) Provide the embedded cost of long-term debt (including current maturities), other long-term debt (itemize), short-term debt and preferred stock for the company (parent only) for the years 1988, 1989, 1990, and 1991.

(173) Provide the following parent-only information for each of the company's parent companies for the years 1988, 1989, 1990, and 1991:

Common Equity

Common Stock

Retained Earnings

Preferred Stock

Long-Term Debt (excluding current maturities on long-term debt)
Other long-term-debt (itemize)
Long-Term Debt-current maturities

Short-Term Debt

(174) Provide the parent-only embedded cost of long-term debt (including current maturities), other long-term debt, short-term debt and preferred stock for each of the company's parent companies for the years 1989, 1990, and 1991.

Because the appropriateness of the test year in this case is interim, the notion that information sought is outside the test year is no defense to lawful compliance with discovery.

Interrogatory No. 175

(175) Rate of Return:

- a. What was Minnesota Power and Light Company's last authorized overall rate of return, capital structure, and return on common equity?
- b. Please provide the date of Minnesota Power and Light Company's last authorized rate of return.

Minnesota Power and Light Company's last allowed rate of return and return on common equity is relevant to Southern States Utilities because it relates to the cost of equity of Southern States. Specifically, it relates to the relative risk between MPL and Southern States. Furthermore, while the information is a matter of public record it would be easier and less costly for the Company to obtain this information than OPC.

Interrogatory 207(b) and (c).

(207) Please refer to MFR Schedule C-9.

- b. Has this method of calculating interest synchronization (netting intercompany loans from the parent company's debt) been approved by the FPSC in the past?
- c. If the response to (b) is affirmative, please identify the order and page number of the order.

The information sought will reflect directly upon the experience and expertise of the person who prepared the MFR, and will thus directly affect that person's credibility. Moreover, the objection raised by SSU in this instance is not a recognized objection in the Florida Rules of Civil Procedure. Given the various positions taken by SSU in this and other matters, the Citizens are most unlikely to rely upon legal research provided by SSU. To comply with discovery, SSU need only say that it does not know the answer to the question if it does not. Because the information is not privileged or otherwise beyond the scope of discovery, SSU must be compelled to answer. If the preparer of the MFR's is not familiar with commission practices in the past, the Citizens have the right to know that.

Interrogatory Nos. 213 and 214

(213) Please provide the number of Kwh sold by MPL's electric operations for the years 1989, 1990, and 1991, broken down between customer groups (residential, commercial, industrial, government, sales for resale, other).

(214) Please provide the average number of customers for MPL's electric operations for the years 1989, 1990, and 1991, broken down between customer groups (residential, commercial, industrial, government, sales for

resale, other).

The Company states that no common costs from Topeka or Minnesota Power and Light Company are allocated to Southern States. OPC has the right to determine:

a. whether common costs from the parent companies (Topeka and Minnesota Power and Light Company) are or are not in fact allocated to Southern States;

b. whether common costs from Minnesota Power and Light Company should be allocated to Southern States even if common costs are not allocated as alleged by the Company;

c. whether "direct charges" from Topeka and Minnesota Power and Light Company are in fact directly charged as opposed to allocated. OPC believes that costs are sometimes claimed to be "directly charged" because this terminology tends to create less controversy; yet, the reality is that the costs are effectively allocated. For these reasons the information requested is relevant. Furthermore, the size and operations of the Company's affiliates are relevant for purposes of testing the reasonableness of the costs which are "directly charged" from Minnesota Power and Light Company to Southern States and MPL and Topeka's other affiliates.

Document Request No. 32

For each Florida Company water and sewer operation, provide a copy of any and all offering statements, lot sales agreements, advertisements, publications, brochures, and other documents which discuss the provision of water and/or sewer service to (or payment for same by) purchasers of lots sold by the Company or by present or former affiliates of the Company.

SSU says that Deltona Corp. v. Mayo, 342 So.2d 510 (Fla. 1977) holds that "the

Commission does not have jurisdiction over contracts or agreements of the nature identified in this document request and is *thus without authority to consider such documents in utility ratemaking proceedings*". (italics added) Not only is that view erroneous, it is a misrepresentation of the holding in Deltona. Deltona prevents the Commission from imputing CIAC on the basis of representations in sales literature. It says nothing to prevent the Citizens--or any one else--from inquiring further based upon sales literature, contracts, or anything else. The document request in question is designed to lead the Citizens to other evidence which may show that CIAC was paid to SSU or its predecessors.

Document Request No. 46

Provide a complete, fully indexed and cross-referenced set of workpapers supporting the testimony and exhibits of each Company sponsored witness.

SSU says it "does not object to producing workpapers supporting the direct testimony and exhibits of each company witness, to the extent such workpapers are available." This lack of objection must be considered in light of their total failure to furnish the documents, based upon their reluctance to index and cross reference the documents. Moreover, the case SSU cites, Evangelos v. Dachiel, 553, So.2d 245, 246 (Fla. 3rd DCA 1989), has nothing to do with the situation at hand: the Citizens do not want SSU to reorganize their records; in fact, the Citizens would like the records in the order in which SSU developed them. That is the plain import of the request.

Document Request No. 51

Provide the non consolidated financial statements of the following entities: BNI Coal; Lake Superior Paper Industries; Topeka Group, Inc.; Heater Utilities; and Minnesota Power and Light.

The Company states that no common costs from Topeka or Minnesota Power and Light Company are allocated to Southern States. OPC has the right to determine:

a. whether common costs from the parent companies (Topeka and Minnesota Power and Light Company) are or are not in fact allocated to Southern States;

b. whether common costs from Minnesota Power and Light Company should be allocated to Southern States even if common costs are not allocated as alleged by the Company;

c. whether "direct charges" from Topeka and Minnesota Power and Light Company are in fact directly charged as opposed to allocated. OPC believes that costs are sometimes claimed to be "directly charged" because this terminology tends to create less controversy; yet, the reality is that the costs are effectively allocated. For these reasons the information requested is relevant. Furthermore, the size and operations of the Company's affiliates are relevant for purposes of testing the reasonableness of the costs which are "directly charged" from Minnesota Power and Light Company to Southern States and MPL and Topeka's other affiliates.

Document Request No. 76

Provide a copy of the Minnesota Power and Light Company's, The Topeka Group's and the company's, travel reimbursement policies and procedures.

This information is relevant, and reasonably calculated to lead to admissible evidence, because Minnesota Power and Light Company and Topeka charge costs to the Company. Unless there are no travel costs in these charges, then the travel reimbursement policies of MPL and Topeka are relevant to evaluating the reasonableness of the expenses charged to Southern States as well as the reasonableness of the policies.

Document Request 83

Please provide a copy of all correspondence, memorandum, studies, reports, or other documents which address the consolidation of the company's operations/consultants.

The Citizens voluntarily clarify the foregoing POD by striking [/consultants] therefrom.

Document Request 85

Please provide a copy of all memoranda (including electronic mail), letters, studies, and reports in the company's custody or control which address the substance of the instant rate proceeding.

The conclusory and self serving statement that the requested documents are immune from discovery does not make it so; SSU fails entirely to liken the substance of the documents requested with work product or with attorney client privilege.

Document Request 87

Please provide a copy of all booklets, publications, and the like produced by the American Water Works Association that were provided to the company during 1991.

The documents sought are probative of whether there are benefits associated with SSU's continuing membership in AWWA. In addition, the used and useful calculations submitted with SSU's MFR's are calculated under the authority of such documents; the Citizens are entitled to ascertain whether the calculations were properly performed.

Document Request 88

Please provide a copy of all drafts of the company's testimony in the instant rate proceeding.

Drafts of testimony which differ from filed versions are admissible as prior inconsistent statements; they go directly to the credibility and candor of the witness.

WHEREFORE, the Citizens ask the commission to deny the motion for protective order and the other relief sought by SSU.

Respectfully submitted,



Harold McLean
Associate Public Counsel

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Room 812
Tallahassee, FL 32399-1400

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 10th day of July, 1992.

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