LAW OFFICES
MESSER, VICKERS, CAPARELLO, MADSEN, LEWIS, GOLDMAN & METZ
A PROFESSIONAL ASSOCIATION

SUITE 701, FIRST FLORIDA BANK BUILDING
215 SOUTH MONROE STREET
POST OFFICE BOX 1876
TALLAHASSEE, FLORIDA 32302-1876
TELEPHONE (904) 222-0720
TELECOPIER (904) 224-4359

SUITE 900
2000 PALM BEACH LAKES BOULEVARD
WEST PALM BEACH, FLORIDA 33409
TELEPHONE (407) 640-0820
TELECOPIER (407) 640-8202

REPLY TO: Tallahassee

ORIGINAL FILE COPY

July 1, 1992

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

HAND DELIVERY

Re: FPSC Docket No. 920199-WS

ACK
AFA 3
APP
CAF
CMU
CTR
EAG
LEG 1 w/m
MAS 4
OPC
RCH
SEC 1
WAS
OTH

Dear Mr. Tribble:

Enclosed herewith for filing in the above-referenced docket are the following documents:

1. Original and fifteen copies of the Motion of Southern States Utilities, Inc. and Deltona Utilities, Inc. for Protective Order Striking and/or Relieving Duty to Respond to Certain Portions of Public Counsel's First, Second, Third and Fourth Sets of Interrogatories and First, Second and Third Sets of Document Production Requests.

2. A disk in Word Perfect 5.0 containing a copy of the document named "Giga.strike".

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 yours,

RECEIVED & FILED
FPSC-BUREAU OF RECORDS

Kenneth A. Hoffman

KAH/rl

Enclosures

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application of Southern States Utilities, Inc. and Deltona Utilities, Inc. for Increased Water and Wastewater Rates	)	DOCKET NO. 920199-WS Filed: July 1, 1992

MOTION OF SOUTHERN STATES UTILITIES, INC. AND DELTONA UTILITIES, INC. FOR PROTECTIVE ORDER STRIKING AND/OR RELIEVING DUTY TO RESPOND TO CERTAIN PORTIONS OF PUBLIC COUNSEL'S FIRST, SECOND, THIRD AND FOURTH SETS OF INTERROGATORIES AND FIRST, SECOND AND THIRD SETS OF DOCUMENT PRODUCTION REQUESTS

TO: Honorable Betty Easley
Commissioner and Hearing Officer
Florida Public Service Commission
101 East Gaines Street
Tallahassee, Florida 32399

SOUTHERN STATES UTILITIES, INC. and DELTONA UTILITIES, INC., (hereinafter collectively referred to as "Southern States"), by and through its undersigned counsel, and pursuant to Rule 25-22.034, Florida Administrative Code, and Rule 1.280(c), Florida Rules of Civil Procedure, request the Prehearing Officer to enter a protective order striking and/or relieving Southern States of any duty to respond to certain interrogatories contained in the Office of Public Counsel's ("Public Counsel") first, second, third and fourth sets of interrogatories and first, second and third sets of document production requests. In support of its request, Southern States states as follows:

1. Rule 25-22.034, Florida Administrative Code, provides that parties to Commission proceedings "may obtain discovery through the means and in the manner provided in Rules 1.280 through 1.400, Florida Rules of Civil Procedure." Under Rule 1.280(c), Florida Rules of Civil Procedure, a party may seek a protective

order requiring that discovery not be had or take place only on specified terms or conditions.

2. On April 24, 1992, Southern States filed an Application for a Rate Increase ("Application") and supporting minimum filing requirements ("MFRs") with the Commission in the above-captioned proceeding. By letters dated May 21 and 28, 1992, the Commission notified Southern States of certain alleged deficiencies in the MFRs. On June 17, 1992, Southern States responded to the alleged deficiencies and filed additional MFR information with the Commission. By letter from the Commission dated June 22, 1992, Southern States was notified that the Commission's MFRs are now satisfied. The official date of filing has been established as June 17, 1992.

3. Prior to acceptance of the Application and MFRs by the Commission, Public Counsel barraged Southern States with seven sets of discovery requests totalling 728 individual requests, including subparts. These 728 requests were made within an 18 day period.

4. On June 10, 1992, Southern States filed a motion for protective order striking and/or requesting clarification of Public Counsel's first set of interrogatories and first set of requests for production of documents ("first motion"). In its first motion, Southern States, inter alia, requested that the Prehearing Officer strike Public Counsel's first sets of interrogatories and document requests on the ground that discovery was premature. Southern States reasserts that no action for rate relief "commences" until the MFRs are accepted and incorporates herein by reference the supporting grounds set forth in its first motion. Southern States

hereby renews its request that each of the seven sets of discovery requests be stricken as premature. Southern States further renews its request that Public Counsel and all other parties to this docket be limited to 200 interrogatories, including subparts, and 100 document production requests, including subparts.

5. In the alternative, and for the reasons stated in this motion, Southern States objects to specific interrogatories and document production requests identified below and seeks a protective order striking and/or relieving Southern States of any duty to respond to certain interrogatories and document requests propounded by Public Counsel. The interrogatories and document requests to which Southern States objects can be identified in four categories: (a) pre-1989 historical information; (b) repetitious interrogatories; (c) projections of information beyond the test year which, by definition, are not "known and quantifiable," and (d) other substantive objections.

A. Pre-1989 Historical Information

6. As Public Counsel is aware, the Commission has approved Southern States' use of a historical test year ending December 31, 1992 in its Application. Southern States' Application thus requests that its revenue requirements and rates be established based upon historical data for the twelve months ended December 31, 1991. Southern States submits that only these historic 1991 costs are at issue in this docket. The Company recognizes that information from periods prior to the test year may, at times, provide useful data for comparative purposes. However, in this case, data for years prior to 1989 is not relevant nor likely to

lead to the production of admissible evidence due to far-reaching changes in the size, composition and corporate structure of Southern States which have occurred during and since 1989.

7. Public Counsel is aware of the dramatic changes which have taken place within Southern States during and since 1989. Public Counsel understands that pre-1989 information is not relevant to nor is it likely to lead to admissible evidence concerning the 1991 historic test year issues in this case. Nonetheless, Public Counsel embarks in a haphazard scheme of discovery revealing no logical consistency or support for requests for information ranging from one (1) year to twelve (12) years prior to the historic test year approved by the Commission in this docket.

8. For instance, Public Counsel apparently believes that to adequately prepare its case, it is necessary for Southern States to provide an assortment of information pertaining to debt reacquired or repurchased over the last ten (10) years (see Interrogatory No. 43). Public Counsel arbitrarily selects six (6) years worth of historical data for the information requests found in Interrogatory Nos. 40, 48, 66, 68, 99, 113 and 115. Public Counsel then decides that five (5) years of historical data will be sufficient in Interrogatory Nos. 16, 49, 62, 65, 72, 84, 92, 104, 122 and 124, and Document Request No. 33. Public Counsel requests four (4) years of historical data in Interrogatory Nos. 28, 59, 67, 81, 85, 87, 88, 90, 93, 94, 110, 144, 145, 146, 147, 171, 172 and 173, and Document Request No. 55. Even Public Counsel's reasonable requests for historical data demonstrate the

lack of uniformity and consistency in its approach since in the remaining several hundred requests, Public Counsel requests information for three (3) years (37 interrogatories), two (2) years (6 interrogatories) and the test year only (the majority of the remaining interrogatories).[1]

9. Discovery under the Florida Rules of Civil Procedure, although wide-ranging has limits. Travelers Indemnity Co. v. Salido, 354 So.2d 963, 964 (Fla. 3d DCA 1978). Although the Commission should afford Public Counsel reasonable access to relevant documents and information, it has an equal obligation to protect Southern States from excessive demands. Riddle Airlines, Inc. v. Mann, 123 So.2d 685, 688 (Fla. 3d DCA 1960). The Commission should also bear in mind that a discovery request that is relevant as to subject matter may nonetheless be rejected if it is excessive. Carribean Security System, Inc. v. Security Control Systems, Inc., 486 So.2d 654, 656 (Fla. 5th DCA 1986). ("To require "documents" as defined by the plaintiff to be produced by the defendant, would in fact cause it to bring its business activities to a halt"); Palmer v. Servis, 393 So.2d 653 (Fla. 5th DCA 1981); Begel v. Hirsch, 350 So.2d 514, 516 (Fla. 4th DCA 1977) (rejecting a document production request that would have required production of "every scrap of paper which was in any way related to" defendant's business). Simply put, discovery should be

---

[1]Some of the remaining interrogatories do not request financial or historical test year information. For example, Interrogatory No. 166 asks "[u]pon what authority does SSU believe it must perform its accounting for external financial statements in accordance with SFAS 106?"

undertaken with due regard to relevancy, reasonableness, and the burden of production. Mass discovery requests undertaken with the hope of producing some useful or relevant information is simply improper. Wofford v. Wofford, 47 So.2d 306 (Fla. 1950).

10. In light of these facts and the dubious relevance of historical information prior to 1989, Public Counsel's predilection to abuse the discovery process is patently obvious. For these reasons, Southern States requests the Prehearing Officer to limit the foregoing discovery requests, listed for convenience in Appendix A, to historical information and documents which do not precede calendar year 1989.

B. Repetitious Document Requests

11. Attached as Appendix B hereto is a list of twenty-three (23) document requests served by Public Counsel on June 2, 1992. Public Counsel has repeated these twenty-three (23) interrogatories verbatim within its Second Request for Production of Documents served on June 2, 1992. Southern States requests the Prehearing Officer to strike the following document requests: 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113 and 114.

C. Projections Beyond the Historic Test Year Which Are Not "Known and Quantifiable"

12. Interrogatory No. 38

> (38) Please list and describe each fringe benefit available to the company's employees, identify the categories of employees entitled to receive such benefit, and state the annual cost to the company of providing such benefit for each of the past three years, and monthly for the test year, also state the budgeted or forecast cost to the company of providing each employee

benefit for the next three years.

The Commission has approved Southern States' use of a historic test year for the twelve months ended December 31, 1991. The requested budget and forecast information for the next 3 years refers to projections which, if they existed, are not "known and quantifiable". Thus, the requested projected information is not relevant and not likely to lead to the production of admissible evidence in this docket.

13. Interrogatory No. 48(c)

(48c) Also state the company's best estimate of such amounts expected to be included in taxable income in the current and next two years.

The Commission has approved Southern States' use of a historic test year for the twelve months ended December 31, 1991. The requested "best estimate" for the current and next two years are projections which are not "known and quantifiable". Thus, the requested projected information is not relevant and not likely to lead to the production of admissible evidence in this docket.

14. Interrogatory No. 52

(52) List projected balances for the next two years in similar detail.

Southern States assumes that this question was intended to refer back to Interrogatory No. 51. The Commission has approved Southern States' use of a historic test year for the twelve months ended December 31, 1991. The requested projections of deferred income taxes for the next two years are not "known and quantifiable". Thus, the requested projected information is not

relevant and not likely to lead to the production of admissible evidence in this docket.

15. Interrogatory No. 94(a) and (b)

> (94a) Provide any and all projections of pension expense and funding the company has based on the most recent census data.
>
> (94b) Provide any and all projections of pension expense and funding the company has based on the most recent census data.

The Commission has approved Southern States' use of a historic test year for the twelve months ended December 31, 1991. The requested information refers to projections of pension funding contributions for the next 3 years which, if they existed, are not "known and quantifiable". Thus, the requested projected information is not relevant and not likely to lead to the production of admissible evidence in this docket.

16. Interrogatory No. 97

> (97) Are there any major plant retirements expected to occur in the four years following conclusion of this rate case.
>
> (a) If so, please identify any and all such retirements and provide the dollar amount on each account affected.

The Commission has approved Southern States' use of a historic test year for the twelve months ended December 31, 1991. The requested information refers to projections of plant retirements for the "four years following conclusion of this rate case" which, if they existed, are not "known and quantifiable". Thus, the requested projected information is not relevant and not likely to lead to the production of admissible evidence in this docket.

17. Interrogatory Nos. 181-183

(181) Capital Structure:

a. Does the company anticipate issuing any debt or preferred stock during the remainder of 1992 or 1993?

b. If the response to (a) is affirmative, please describe the circumstances surrounding the anticipated issuance, including the expected issuance and maturity date, the amount to be issued or sold, the anticipated discount or premium, the anticipated issuance expense,, and the anticipated cost, interest or coupon rate.

(182) Capital Structure:

a. Does the Topeka Group anticipate issuing any debt or preferred stock during the remainder of 1992 or 1993?

b. If the response to (a) is affirmative, please describe the circumstances surrounding the anticipated issuance, including the expected issuance and maturity date, the amount to be issued or sold, the anticipated discount or premium, the anticipated issuance expense, and the anticipated cost, interest or coupon rate.

(183) Capital Structure:

a. Does Minnesota Power and Light Company anticipate issuing any debt during the remainder of 1992 or 1993?

b. If the response to (a) is affirmative, please describe the circumstances surrounding the anticipated issuance, including the expected issuance and maturity date, the amount to be issued or sold, the anticipated discount or premium, the anticipated issuance expense,, and the anticipated cost, interest or coupon rate.

The Commission has approved Southern States' use of a historic test year for the twelve months ended December 31, 1991. The requested projections of "anticipated" issuances of debt in the future, if they existed, are not "known and quantifiable". Thus, the requested projected information is not relevant and not likely to lead to the production of admissible evidence in this docket.

18. Interrogatory No. 185

Capital Structure:

a. Does the Minnesota Power and Light Company anticipate issuing any common stock or preferred stock during the remainder of 1992 or 1993?

b. If the response to (a) is affirmative, please identify the amount anticipated to be issued, the unauthorized discount or premium, the unamortized issuance expense, the annual amortization of the discount or premium, the annual amortization of the issuance expense, and the cost rate for preferred.

The Commission has approved Southern States' use of a historic test year for the twelve months ended December 31, 1991. The requested projections of "anticipated" issuances of stock, if they existed, are not "known and quantifiable". Thus, the requested projected information is not relevant and not likely to lead to the production of admissible evidence in this docket.

19. Interrogatory Nos. 189-191

(189) Capital Structure:

a. Does the company anticipate refunding or retiring any debt or preferred stock during 1992 or 1993?

b. If the response to (a) is affirmative, please identify the instruments anticipated to be refunded or retired, the issued and maturity date, the amount refunded or retired, the amount outstanding, the unamortized discount or premium, the unamortized issuance expense, the annual amortization of the discount or premium, the annual amortization of the issuance expense, and the cost, interest or coupon rate.

(190) Capital Structure:

a. Does the Topeka Group anticipate refunding or retiring any debt or preferred stock during 1992 or 1993?

b. If the response to (a) is affirmative, please identify the instruments anticipated to be refunded or retired, the issued and maturity date, the amount refunded or retired, the amount outstanding, the unamortized discount or premium, the unamortized issuance expense, the annual amortization of the discount or premium, the annual amortization of the issuance expense, and the cost, interest or coupon rate.

(191) Capital Structure:

a. Does the Minnesota Power and Light Company anticipate refunding or retiring any debt or preferred stock during the remainder of 1992 or 1993?

b. If the response to (a) is affirmative, please identify the instruments anticipated to be refunded or retired, the issued and maturity date, the amount refunded or retired, the amount outstanding, the unamortized discount or premium, the unamortized issuance expense, the annual amortization of the discount or premium, the annual amortization of the issuance expense, and the cost, interest or coupon rate.

The Commission has approved Southern States' use of a historic test year for the twelve months ended December 31, 1991. The requested projections of "anticipated" refunds or retirements of debt, if they existed, are not "known and quantifiable". Thus, the requested projected information is not relevant and not likely to lead to the production of admissible evidence in this docket.

20. Interrogatory No. 193

(193) Please provide the company's pre-tax interest coverage ratio for the years 1989, 1990, and 1991. Please provide any projections of the company's pre-tax interest coverage ratio for the years 1992, 1993, and 1994. Provide all calculations and assumptions used to respond to this request.

The Commission has approved Southern States' use of a historic test year for the period ended December 31, 1991. The requested projections of interest coverage ratios, if they existed, are not "known and quantifiable". Thus, the requested projected information is not relevant and not likely to lead to the production of admissible evidence in this docket.

21. Interrogatory No. 210

(210) Please provide the projected number of ERCs for

each of the Company's systems for the years 1992, 1994 and 1994.

The Commission has approved Southern States' use of a historic test year for the twelve months ended December 31, 1991. The requested information concerns projections of ERCs which, if they existed, are not "known and quantifiable". Thus, the requested projected information is not relevant and not likely to lead to the production of admissible evidence in this docket.

22. Document Request No. 28

(28) Provide a copy of each bonus and incentive compensation plan in use at the Company and the annual cost to the Company under each such plan for the years 1989, 1990 and 1991 and state the annual budgeted cost expected to be incurred by the Company under each such bonus or incentive plan for the current year and the next three years.

The Commission has approved Southern States' use of a historic test year for the twelve months ended December 31, 1991. The requested information concerns projections of costs for bonuses or incentives which, if they existed, are not "known and quantifiable." Thus, the requested projected information is not relevant and not likely to lead to the production of admissible evidence in this docket.

D. Other Substantive Objections

23. 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 MFRs 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.

These interrogatories request information concerning Southern States' communications with Commission Staff and advice which may or may not have been provided by Staff to Southern States and which may or may not have been recorded. Rule 1.280(b), Florida Rules of Civil Procedure, states that the scope of discovery is limited to "any matter, not privileged that is relevant to the subject matter of the pending action . . . (or) appears reasonably calculated to lead to the discovery of admissible evidence." No response ultimately given to these requests could in any manner be considered relevant or likely to lead to the discovery of admissible evidence in this docket. In addition, it would be unduly burdensome and time-consuming for Southern States to attempt to respond to such requests since Southern States' rate case efforts are truly "total company" efforts. The man hours wasted in attempts to recall even a limited number of conversations and/or locate possible records thereof are countless. Moreover, the very nature of these requests is frivolous in light of the regulated character of the water and wastewater operations conducted by Southern States.

24. Interrogatory No. 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.

This interrogatory requests information concerning Southern States' affiliates, including parent companies. Interrogatory Nos. 137 and 138 request the same information for water and wastewater systems owned and operated by Southern States. The information requested in Interrogatory No. 139 appears to apply to Minnesota Power, Topeka and other non-regulated affiliates which do not share common costs with Southern States and do not allocate costs to Southern States. For these reasons, the information requested is not relevant and not likely to lead to the production of admissible evidence in this docket.

25. Interrogatory No. 163

(163) Does the company or any of its affiliates hold that SFAS 106 in any way preempts state law.

This question seeks information in the form of legal theories and positions of Southern States and its counsel. The legal theories of Southern States and its counsel are protected by the work product privilege and exception to discovery under Rule 1.280(b)(3), Florida Rules of Civil Procedure, and the cases construing that rule. See, e.g., Surf Drugs, Inc. v. Vermette, 236

So.2d 108, 112 (Fla. 1970) (work product includes legal theories, strategies and proposed arguments); Equal Employment Opportunity Commission v. Otto, 75 F.R.D. 624, 627 (D. Md. 1976) (under Rule 26(b)(3), Federal Rules of Civil Procedure - - pertinent language of which is identical to that found in Rule 1.280(b)(3), Florida Rules of Civil Procedure -- defendant not entitled to discover legal conclusions opposing attorney intends to draw from underlying facts of case).

26. Interrogatory No. 164

> (164) If the Florida PSC sets rates and revenue requirements for the company without any allowance for any alleged expense associated with SFAS 106, would the Florida PSC violate any federal statute(s). If so, please specifically identify which statute(s).

Southern States is not qualified to determine whether the Commission would violate federal statutes under any circumstances. To the extent Public Counsel seeks Southern States' interpretation of the potential applicability of federal statutes and whether such statutes, as interpreted by Southern States, would be violated, such information relates to legal theories of Southern States and its counsel which are not proper subjects of discovery but rather are for legal argument. See cases cited in paragraph 24 above.

27. Interrogatory No. 168

> (168) With respect to the answer to the immediately preceding interrogatory, is the Florida PSC legally accountable to the identified authority in any way; if so, specifically identify any aspect of law which leads the company to that conclusion.

Southern States is not qualified to determine whether the Commission may be held "accountable" to any "authority" under any circumstances. To the extent Public Counsel seeks Southern States'

interpretation of the possible "accountability" of the Commission to other presumably governmental authorities, such information relates to information concerning legal theories which are not proper subjects of discovery but rather are for legal argument. See cases cited in paragraph 24 above.

28. 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.

The Commission has approved Southern States' use of a historic test year for the twelve months ended December 31, 1991. These interrogatories request information concerning the capital structure of Southern States' **parents** for three years (interrogatory nos. 171, 172 and 173) and two years (interrogatory No. 174) prior to the test year. This information is not relevant and not likely to lead to the production of admissible evidence in this docket.

29. 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.

The information requested is not relevant and not likely to lead to the production of admissible evidence in this docket. In addition, the information requested is public information and may readily be obtained by Public Counsel from other sources available to the public.

30. Interrogatory No. 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.

This question requests Southern States to perform legal research for Public Counsel and, as such, is not a proper question for discovery but rather is a matter of legal research and, perhaps, legal argument.

31. 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).

No costs associated with Minnesota Power and Light Company's electric operations are allocated to Southern States. Minnesota Power charges Southern States directly for any services which may be rendered by Minnesota Power for Southern States. For these reasons, the information requested concerning Minnesota Power's electric operations (average number of customers and kwhs sold by customer group) is not relevant and not likely to lead to the production of admissible evidence in this docket.

32. Interrogatory No. 223

> (223) Please explain why the Company used a projected test year for Lehigh Utilities, Inc., but used a historical test year for the systems filed in the instant proceeding.

The information relates to Southern States' "theory of the case" which is protected by the attorney work product and attorney-client privileges. See Rule 1.280(b)(3), Florida Rules of Civil

Procedure and Section 90.502, Florida Statutes, respectively. Moreover, the information requested is not relevant and is likely to lead to the production of admissible evidence in this docket.

33. Document Request No. 32

> (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.

Southern States is not a developer and does not sell lots to our customers. To the extent this question refers to contracts and other agreements between our customers and land developers, whether or not such land developers formerly were affiliates of Southern States, such documents are not relevant and not likely to lead to the production of admissible evidence in this docket. See Deltona Corp. v. Mayo, 342 So.2d 510 (Fla. 1977), in which the Supreme Court of Florida held that the Commission does not have jurisdiction over contracts or agreements of the nature identified in this document request and thus is without authority to consider such documents in utility ratemaking proceedings.

34. Document Request No. 46

> (46) Provide a complete, fully indexed and cross-referenced set of workpapers supporting the testimony and exhibits of each Company sponsored witness.

Southern States does not object to producing workpapers supporting the direct testimony and exhibits of each company witness, to the extent such workpapers are available. Southern States does object to providing a "complete, fully indexed and cross-referenced set of workpapers" as such constitutes an

unreasonable and overly burdensome request. Southern States is not required to comply with such request. See Evangelos v. Dachiel, 553 So.2d 245, 246 (Fla. 3rd DCA 1989) (it was error for trial court to order defendant to reorganize large volume of records so as to correspond to categories employed by plaintiff in plaintiff's document request).

35. Document Request No. 51

> (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 documents requested pertain to companies which do not share common costs with Southern States and do not allocate costs to Southern States. For these reasons, the documents requested are not relevant and not likely to lead to the production of relevant evidence in this docket.

36. Document Request No. 76

> (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.

Southern States objects to producing copies of any travel reimbursement policies and procedures of Minnesota Power and Light Company and Topeka Group, Inc. on the grounds that such documents are not relevant and not likely to lead to the production of admissible evidence in this docket.

37. Document Request No. 77

> (77) Provide a copy of the company's, The Topeka Group's, and Minnesota Power and Light Company's two most recent prospectuses.

Southern States objects to producing copies of the two most recent prospectuses of Minnesota Power and Light Company and Topeka Group, Inc. on the grounds that such documents are not relevant and not likely to lead to the production of admissible evidence in this docket.

38. Document Request No. 83

> (83) Please provide a copy of all correspondence, memorandum, studies, reports, or other documents which address the consolidation of the company's operations/consultants.

Southern States objects to and requests clarification of document request no. 83. Southern States does not understand what Public Counsel means by "the consolidation of the company's operations/consultants". Southern States requests clarification of the information sought by Public Counsel under this document request and reserves any and all objections thereto upon clarification of the request.

39. Document Request No. 84

> (84) Please provide a copy of all correspondence, memorandum, letters, reports, etc. between the company and the consultants that it retained for purposes of assisting with the instant rate proceeding.

Under Florida law, the documents requested by Public Counsel pertaining to Southern States' non-testimonial experts and consultants are protected as work product and immune from discovery unless Public Counsel demonstrates that it needs the requested information and cannot obtain substantially equivalent information without undue hardship. See, e.g., Myron v. Doctors General, Ltd., 573 So.2d 34 (Fla. 4th DCA 1991); Gilmor Trading Corp. v. Lind Electric, Inc., 555 So.2d 1258 (Fla. 3rd DCA 1990); Proctor &

Gamble Co. v. Swilley, 462 So.2d 1188 (Fla. 1st DCA 1985). Southern States objects to the production of the documents requested in document request no. 84 and is under no obligation to provide such documents unless and until Public Counsel meets its factual and legal burden imposed under Florida law.

40. Document Request No. 85

> (85) Please provide a copy of all memorandum (including electronic mail), letters, studies, reports in the company's custody or control which address the substance of the instant rate proceeding.

Southern States objects to the production of the requested documents, apart from documents which will be presented as evidence at the hearing, on the grounds that such documents are immune from discovery under the work product and attorney-client privileges.

41. Document Request No. 86

> (86) Please provide a copy of any orders from the Minnesota Public Service Commission issued within the last five years which address Minnesota Power and Light Company's affiliation with its subsidiaries, including but not limited to methods of charging for services and products between and among affiliates and methods of allocating costs between and among affiliates.

Southern States objects to production of the documents requested in document request no. 86. Production of the requested documents would require the expenditure of the time and resources of Southern States and its counsel to conduct legal research to ascertain if any such orders of the Minnesota Public Service Commission have been issued. Southern States is under no obligation to perform such legal research for an opposing party and Public Counsel may just as easily perform such research.

42. Document Request No. 87

(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.

Southern States objects to producing the documents requested in document request no. 87. The Commission should not require Southern States to bear the undue burden and expense of searching its files to determine what documents, books, booklets, publications and the like have been provided to Southern States by the American Water Works Association. Copies of any and all booklets, books, publications and similar materials available from the American Water Works Association may be obtained directly by Public Counsel from the Association.

43. Document Request No. 88

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

Southern States objects to the production of all drafts of the company's prefiled direct testimony, to the extent such drafts have been retained, on the grounds that the drafts are protected from discovery under the work product and attorney-client privileges.

WHEREFORE, for the foregoing reasons, Southern States requests that the Prehearing Officer enter a protective order:

(1) striking Public Counsel's first, second, third and fourth sets of interrogatories and first, second and third sets of document production requests; or, in the alternative,

(2) striking and/or relieving Southern States of any duty to respond those portions of the interrogatories identified in Appendix A which relate to information prior to 1989;

(3) striking the repetitious document requests identified in Appendix B;

(4) striking and/or relieving Southern States of any duty to respond to Interrogatory Nos. 1, 2, 38, 48(c), 52, 94(a) & (b), 97, 139, 163, 164, 168, 171, 172, 173, 174, 175, 181, 182, 183, 185, 189, 190, 191, 193, 207(b) & (c), 210, 213, 214 and 223 for the reasons stated herein;

(5) striking and/or relieving Southern States of any duty to comply with document production request nos. 28, 32, 46, 51, 76, 77, 83, 84, 85, 86, 87 and 88; and

(6) granting Southern States such other relief as the Prehearing Officer may deem appropriate.

Respectfully submitted this 1st day of July, 1992.

MESSER, VICKERS, CAPARELLO, MADSEN,
LEWIS, GOLDMAN & METZ, P.A.
215 S. Monroe Street, Suite 701
Post Office Box 1876
Tallahassee, FL 32302-1876
(904) 222-0720

KENNETH A. HOFFMAN, ESQ.

and

BRIAN P. ARMSTRONG, ESQ.
Southern States Utilities, Inc.
1000 Color Place
Apopka, FL 32703
(407) 880-0058

Attorneys for Applicants,
Southern States Utilities, Inc.
and Deltona Utilities, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the Motion of Southern States Utilities, Inc. and Deltona Utilities, Inc. for Protective Order Striking and/or Relieving Duty to Respond to Certain Portions of Public Counsel's First, Second, Third and Fourth Sets of Interrogatories and First, Second and Third Sets of Document Production Requests has been served by hand delivery (*) and/or United States Mail on July __/___, 1992 to the following parties of record:

Matthew Feil, Esq.*
Division of Legal Services
Fla. Public Service Commission
101 E. Gaines Street
Tallahassee, FL 32301

Harold McLean, Esq.
Office of Public Counsel
Rm. 812, Claude Pepper Bldg.
111 West Madison Street
Tallahassee, FL 32399-1400

Kenneth A. Hoffman
KENNETH A. HOFFMAN, ESQ.

APPENDIX A

INTERROGATORIES AND DOCUMENT REQUESTS WHICH SHOULD BE LIMITED TO THREE YEARS OF HISTORICAL INFORMATION (1989, 1990 AND 1991)

Interrogatories

28	68	99	147
40	72	104	171
43	81	110	172
48	84	113	173
49	85	115	
59	87	122	
62	88	124	
65	90	144	
66	93	145	
67	94	146	

Document Requests

33
55

APPENDIX B

REPETITIVE DOCUMENT REQUESTS WHICH SHOULD BE STRICKEN

Document Request Number		Document Request Number (Strike)
69	is identical to	92
70	"	93
71	"	94
72	"	95
73	"	96
74	"	97
75	"	98
76	"	99
77	"	100
78	"	101
79	"	102
80	"	103
81	"	104
82	"	105
83	"	106
84	"	107
85	"	108
86	"	109
87	"	110
88	"	111
89	"	112
90	"	113
91	"	114