

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application for rate ) DOCKET NO. 950495-WS  
increase and increase in service ) ORDER NO. PSC-96-0509-PCO-WS  
availability charges by Southern ) ISSUED: April 15, 1996  
States Utilities, Inc. 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. )  
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ORDER ON OBJECTIONS TO DOCUMENT REQUESTS NUMBERS 307, 310,  
311, AND 312 FROM THE OFFICE OF PUBLIC COUNSEL'S  
TWENTY-SECOND AND TWENTY-THIRD SETS OF REQUESTS FOR PRODUCTION  
OF DOCUMENTS AND MOTION FOR PROTECTIVE ORDER

On March 12, 1996, Southern States Utilities, Inc., (SSU or utility) filed Objections to the Office of Public Counsel's (OPC) Document Request Number 307 from OPC's Twenty-second Set of Requests for Production of Documents, and to Document Requests Numbers 310, 311, and 312 from OPC's Twenty-third Set of Requests for Production of Documents and Motion for Protective Order. On March 18, 1996, OPC filed the Citizens' Response to SSU's Objections and Citizens' Response to SSU's Motion for Protective Order.

Document Request No. 307

By Document Request No. 307, OPC requests that SSU provide a copy of all attachments and exhibits mentioned in the December 14, 1993, letter from Laura Holquist, an officer of Lehigh Corporation (Lehigh) to Ronald Sorensen, an attorney retained by Lehigh. The Holquist-Sorensen letter contains references to six exhibits and eight attachments. SSU objects to the production of Exhibits Nos. 1 through 6, and Attachments Nos. 1, 4, 5, and 6 to that letter. OPC does not address this Document Request in its response.

SSU objects to producing Exhibits Nos. 1, 3, 4, and 5 and Attachments Nos. 1, 4, 5, and 6 on the basis that it does not have possession, custody or control of those documents. Moreover, with respect to Exhibits Nos. 4 and 5, SSU states that it has already produced the only documents relative to those document requests that are in its possession. Additionally, SSU objects to producing

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Exhibit No. 1 on the ground that it contains legal research and analysis which is protected from disclosure under the work product and attorney-client privileges.

In its objection, SSU notes that Rule 1.280(b), Florida Rules of Civil Procedure, does not require it to produce documents that are not within its possession, custody, or control. Because SSU represents that it has already produced these documents to the extent that they are within its possession, custody or control, it shall not be required to produce additional documents by Document Request No. 307 comprising Exhibits Nos. 1, 3, 4, and 5, or Attachments Nos. 1, 4, 5, and 6 to the Holquist-Sorenson letter. SSU's objection is sustained, and its Motion for Protective Order is granted with respect to those documents. It is therefore unnecessary to rule upon SSU's additional objection to producing Exhibit No. 1.

By Exhibit No. 2, OPC requests that SSU produce certain pages from a final order of the Commission. In objecting to this request, SSU argues that it should not be required to conduct legal research and produce documents which are public records already available to OPC. The Commission's orders are public documents and are easily accessible to OPC. Accordingly, SSU's objection is sustained, and its Motion for Protective Order is granted with respect to this request. The utility shall not be required to produce Exhibit No. 2 from Document Request No. 307.

Exhibit No. 6 is a request for copies of "Water Supply and Sewer Disposal sections of select offering statements." In its objection, SSU states that it is not required to produce Exhibits 1 through 6, nor Attachments 1, 4, 5, and 6, based on the prior decisions rendered in Orders Nos. PSC-96-0240-PCO-WS, issued February 19, 1996, and PSC-95-1503-PCO-WS, issued December 5, 1995, in this docket. We have required SSU in this proceeding to produce documents for which it has possession, custody or control, and which are within the scope of Rule 1.280(b), Florida Rules of Civil Procedure. See, e.g., Order No. PSC-96-0240-PCO-WS. SSU has stated and OPC has not demonstrated the contrary that the document requested (Exhibit 6) is not within SSU's control. Therefore, SSU's objection is sustained, and its Motion for Protective Order is granted with respect to this request.

Document Request No. 310

Document Request No. 310 is comprised of seven items, of which SSU objects to producing documents under items nos. 1 through 3, and 6. With respect to items nos. 1 through 3, SSU notes that OPC previously requested the production of those documents in a notice

of deposition duces tecum, and states that it has already produced all documents in its possession responsive to these items. In its response, among other things, OPC observes that although SSU states it has produced all documents in its possession, it does not state that it has produced all documents in its custody or control. OPC further argues that if SSU has already produced all documents in its possession, custody, or control responsive to the request, it should say so in its response rather than in the form of an objection.

Upon consideration, SSU's objection is overruled to the extent that it has not produced all documents relative to items nos. 1 through 3 of Document Request No. 310 which are in its possession, custody, or control. SSU shall produce any such documents as may exist by April 22, 1996, which is the date upon which all discovery shall be completed in this docket, unless good cause is shown.

By Item No. 6 of Document Request No. 310, OPC requests that SSU provide "all documents in [its] possession, custody or control (including drafts) containing, discussing, referring to, or evaluating . . . [c]ommunications with any government agency or any member of its staff." SSU objects to producing these documents on the grounds that the request is vague, ambiguous, overly broad, burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. OPC does not address this objection in its response.

Upon reviewing Item No. 6 of Document Request No. 310, it appears that OPC has specified that it seeks communications with "any" government agency. OPC has not been specific as to the relevant time period for which it seeks the discovery. To that degree, the request is overly broad and burdensome. Moreover, "any" government agency is vague in that OPC has not specified whether its request encompasses federal, state, county, or municipal agencies. Accordingly, SSU's objection is sustained, and its Motion for Protective Order is granted with respect to this request.

Document Requests Nos. 311 and 312

With respect to Document Requests Nos. 311 and 312, SSU states that it has either produced these documents already at a deposition taken in this docket or they are subsumed within items nos. 4, 5, and 7 of Document Request No. 310. In its response, OPC argues, among other things, that SSU can simply state that it has provided these documents in its response to Document Request No. 310, if that is true.

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Because SSU represents that it will produce as part of Document Request No. 310 all documents requested by Document Requests Nos. 311 and 312 which it has not already produced, a ruling upon SSU's objection to these Document Requests is not necessary.

Accordingly, SSU shall provide the responses to discovery required by this Order to OPC by April 22, 1996, which is the date upon which all discovery shall be completed in this docket, unless good cause is shown.

Based on the foregoing, it is

ORDERED by the Commissioner Diane K. Kiesling, as Prehearing Officer that Southern States Utilities, Inc.'s, Motion for Protective Order is granted in part and denied in part as set forth in the body of this Order. It is further

ORDERED that Southern States Utilities, Inc., is hereby directed to respond to the pertinent portions of the Office of Public Counsel's discovery requests as set forth in the body of this Order by April 22, 1996, unless good cause is shown.

By ORDER of Commissioner Diane K. Kiesling, as Prehearing Officer, this 15th day of April, 1996.

  
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DIANE K. KIESLING, Commissioner and  
Prehearing Officer

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code, if issued by a Prehearing Officer; (2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or (3) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of Records and Reporting, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.