

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for rate)
increase in Brevard, Charlotte/)
Lee, Citrus, Clay, Duval,)
Highlands, Lake, Marion,)
Martin, Nassau, Orange,)
Osceola, Pasco, Putnam,)
Seminole, Volusia, and)
Washington Counties by SOUTHERN)
STATES UTILITIES, INC.; Collier)
County by MARCO SHORES)
UTILITIES (Deltona); Hernando)
County by SPRING HILL UTILITIES)
(Deltona); and Volusia County)
by DELTONA LAKES UTILITIES)
(Deltona))
_____)

DOCKET NO. 920199-WS
ORDER NO. PSC-92-1059-PCO-WS
ISSUED: 09/23/92

ORDER DENYING IN PART AND GRANTING IN PART
SOUTHERN STATES UTILITIES, INC.'S
MOTIONS FOR PROTECTIVE ORDERS

Motion for Protective Order-August 3, 1992

On August 3, 1992, Southern States Utilities, Inc., and Deltona Utilities, Inc., (the utility) filed a Motion for Protective Order Directed to Public Counsel's Fifth Set of Interrogatories and Fourth Set of Requests for Production of Documents. The Office of Public Counsel (OPC) did not respond to these objections.

Having reviewed the arguments in the utility's motion and taking into account OPC's failure to respond, I hereby grant in part and deny in part the utility's motion as set forth below.

The utility objects to OPC Interrogatory No. 279(c) because the solicited projected 1992 data is not known or quantifiable. In this interrogatory, OPC asked how often each of the utility's lift stations were cleaned and pumped during 1989, 1990, 1991, and 1992.

I do not think it is proper to consider OPC's failure to respond as a withdrawal of its discovery request. However, I do not believe that the utility should be required to produce information or answer questions based on information that does not presently exist. If the solicited projection or estimate has been already prepared by the utility for its own purposes, the utility shall answer the discovery. However, if the discovery solicits a

DOCUMENT NUMBER-DATE

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projection or estimate which does not exist, the utility need not answer. Judging from the utility's statement, the projected data for 1992 does not presently exist.

The utility objected to and sought clarification of OPC Document Request No. 1 (later renumbered to Document Request No. 119). In its motion, the utility states that the OPC appears to be requesting 1990 and 1991 consolidated financial statements of Minnesota Power and Light Company (MPL) and Topeka Group, Inc., (Topeka). The utility asserts that it is not aware of any consolidated financial statements consisting only of MPL and Topeka.

Again, I will not consider OPC's failure to respond as a withdrawal; concomitantly, I cannot grant the utility's request for a protective order based on a request for clarification. Therefore, the utility's motion is denied with regard to this item.

The utility objected to OPC Document Requests Nos. 2 and 4, which OPC subsequently renumbered to Nos. 120 and 122, respectively. I address this objection below because the utility repeated this objection in its motion of August 20, 1992.

Motion for Protective Order-August 20, 1992

On August 20, 1992, the utility filed a Motion for Protective Order Directed to OPC's Amended Fourth, Amended Fifth, and Sixth sets of Requests for Production of Documents. On September 8, 1992, OPC filed a response, but only addressed the utility's objection to Document Request No. 145.

Having reviewed the arguments of the parties, I hereby deny in part and grant in part the utility's motion as set forth below.

The utility renews its objection to OPC Document Request Nos. 120 and 122 (which were formerly OPC Document Request Nos. 2 & 4 as explained above) and asserts that it will produce only those documents that are currently in its possession. OPC Document Request No. 120 solicits copies of all rating agency reports from 1990 forward which deal with the utility, Topeka, and MPL, while No. 122 solicits "a copy of any S&P, Moody's, Duff & Phelps, and Finch published documents which set forth factors taken into consideration when rating bonds of water and wastewater utilities."

Again, OPC's failure to respond will not be deemed a withdrawal; however, as the utility has produced the documents in its possession I see no need to rule on the objection.

The utility objects to OPC Document Request No. 132, which requests production of a copy of Staff Advisory Bulletin No. 13. The utility argues the information is a matter of public record, readily obtainable from other sources. OPC did not respond to the objection. Therefore, I think it safe to presume from OPC's failure to respond and from the nature of the document sought, that OPC obtained the information from another source.

The utility objects to OPC Document Request No. 145, which requests, to "Provide a copy of all State and Federal Commission orders in the Company's possession which address the regulatory treatment of acquisition adjustments upon which the Company intends to rely in this case, if any." The utility argues that this request solicits the utility's legal theories that are not discoverable under the work product privilege of Rule 1.280(b)(3), Florida Rules of Civil Procedure. The utility also cites case law to support its assertion that such documents are not discoverable.

In its response, OPC argues that it seeks neither legal theories, strategies, and proposed arguments nor opposing Counsel's proposed legal conclusions based on the underlying facts of the case. OPC states that "while SSU could rightfully object to the Citizens' seeking the legal conclusions which SSU draws from any of the referenced documents, it cannot resist production of the documents themselves under color of work product privilege."

In OPC's response, it misquotes the discovery request so as to exclude the pertinent portion of the request: "upon which the Company intends to rely in this case, if any." OPC's argument implies that the document request solicits something other than what the request plainly states it solicits. Therefore, I think it appropriate to require the utility to comply with the discovery request as restated by OPC in its response. Thus, the utility shall produce all of the requested documents in its possession, which need not necessarily be those upon which it intends to rely in this case, as that limiting factor imports the solicitation of work product. The utility shall produce said documents within seven (7) days of the date of this Order.

August 31, 1992, Objections to OPC Interrogatory No. 320 and Document Request No. 169

On August 31, 1992, the utility filed an objection to Interrogatory No. 320 and Document Request No. 169, which solicit accounting information surrounding the operation and sale of St. Augustine Shores and Deltona Gas. In its objection, the utility asserts that the request is not relevant nor reasonably calculated to lead to the discovery of admissible evidence because the St. Augustine Shores system was regulated by St. Johns County at the time of the County's condemnation. The utility argues that the request is not relevant because the utility is not seeking recovery of any 1991 costs or investment from the St. Augustine Shores System or the Deltona Gas System from customers serviced by the Commission.

In its response, OPC asserts that any financial activity in which the utility had a role, particularly in Florida, is relevant. OPC adds that it is entitled to the opportunity

to scrutinize any matter within the utility's possession that could lead to information which might either show or reasonably lead to information which might show the accuracy, correctness, and prudence of the various allocations adopted by the utility and of the accounting treatment of the financial issues surrounding the operation of sale of St. Augustine Shores.

I find OPC's argument persuasive and its discovery in this area proper. OPC should have the right to determine if the accounting entries for the sale were properly recorded and that no costs or assets were somehow transferred to a system other than St. Augustine Shores or Deltona Gas. The utility shall respond to Interrogatory No. 320 and produce said documents in OPC Document Request No. 169 within seven (7) days of this Order.

Finally, I note that in its response to the utility's August 31 objection, OPC reiterated its August 25 motion for additional time in which to file testimony in this proceeding. This matter will be addressed in a separate Order.

Based upon the foregoing, it is

ORDER NO. PSC-92-1059-PCO-WS
DOCKET NO. 920199-WS
PAGE 5

ORDERED by Commissioner Betty Easley, as Prehearing Officer, that the Motion for Protective Order Directed to Public Counsel's Fifth Set of Interrogatories and Fourth Set of Requests for Production of Documents filed August 3, 1992 by Southern States Utilities, Inc., and Deltona Utilities, Inc., is hereby denied in part and granted in part as set forth in the body of this Order. It is further

ORDERED that the Motion for Protective Order Directed to Public Counsel's Amended Fourth, Amended Fifth and Sixth Sets of Requests for Production of Documents filed August 20, 1992 by Southern States Utilities, Inc., and Deltona Utilities, Inc., is hereby denied in part and granted in part as set forth in the body of this Order. It is further

ORDERED that the objection to Interrogatory No. 320 and Document Request No. 169, filed August 31, 1992 by Southern States Utilities, Inc., and Deltona Utilities, Inc., is hereby denied as set forth in the body of this Order.

By ORDER of Commissioner Betty Easley, as Prehearing Officer, this 23rd day of September, 1992.



BETTY EASLEY, Commissioner
and Prehearing Officer

(S E A L)

RG/MF

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

ORDER NO. PSC-92-1059-PCO-WS
DOCKET NO. 920199-WS
PAGE 6

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 the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) 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 sewer utility by filing a notice of appeal with the Director, Division of Records and Reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Civil Procedure. The notice of appeal must be in the form specified in Rule 9.900 (a), Florida Rules of Appellate Procedure.