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Tallahassee

July 28, 1992

REPLY TO:

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

HAND DELIVERY

ORIGINAL  
FILE COPY

Re: FPSC Docket No. 920199-WS

Dear Mr. Tribble:

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

1. Original and one copy of Southern States Utilities, Inc. and Deltona Utilities, Inc.'s Second Notice of Service of Responses to Portion of Public Counsel's First Set of Interrogatories and First Request for Production of Documents;

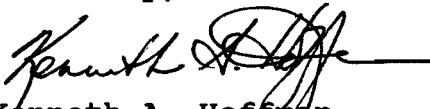
2. Original and fifteen copies of Southern States' Response to Public Counsel's Petition for Reconsideration of Order No. PSC-92-0638-PCO-WS (Order Establishing Procedure); and

3. A disk in Word Perfect 5.0 containing a copy of the document entitled "Giga.Petition".

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,

  
Kenneth A. Hoffman

- \* ACK
- AFA 3
- APP 92-0638-PCO-WS
- CAF \_\_\_\_\_
- CNU \_\_\_\_\_
- CTR \_\_\_\_\_
- EAG \_\_\_\_\_
- LEG 1
- LIN 4
- OPC \_\_\_\_\_
- RCH \_\_\_\_\_
- SEC 1
- WAS 1
- OTH \_\_\_\_\_

KAH/rl  
Enclosures  
cc: Brian P. Armstrong, Esq.

RECEIVED & FILED

LF

RECORDS

DOCUMENT NUMBER-DATE

08364 JUL 28 1992

FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application of Southern )  
States Utilities, Inc. and Deltona )  
Utilities, Inc. for Increased )  
Water and Wastewater Rates in )  
Citrus, Nassau, Seminole, Osceola, )  
Duval, Putnam, Charlotte, Lee, )  
Lake, Orange, Marion, Volusia, )  
Martin, Clay, Brevard, Highlands, )  
Collier, Pasco, Hernando, and )  
Washington Counties. )

Docket No. 920199-WS  
Filed: July 28, 1992

**SOUTHERN STATES' RESPONSE TO PUBLIC COUNSEL'S  
PETITION FOR RECONSIDERATION OF ORDER NO.  
PSC-92-0638-PCO-WS (ORDER ESTABLISHING PROCEDURE)**

SOUTHERN STATES UTILITIES, INC. and DELTONA UTILITIES, INC.  
(hereinafter referred to collectively as "Southern States"), by and  
through undersigned counsel, hereby files the following response  
to the Office of Public Counsel's ("Public Counsel") Petition for  
Reconsideration of Order No. PSC-92-0638-PCO-WS (Order Establishing  
Procedure):

1. In its Petition for Reconsideration, Public Counsel asks  
the full Commission to reconsider the decision of the Prehearing  
Officer authorizing parties to serve no more than 1,000  
interrogatories (including all subparts) and 500 document requests  
(including all subparts). Under the Order Establishing Procedure,  
a party may not exceed the foregoing discovery limitations  
"[u]nless authorized by the Prehearing Officer for good cause shown  
...."

2. Southern States believes it is important for the  
Commission to understand the factual background on this issue. As  
Public Counsel acknowledges in its Petition for Reconsideration,  
the discovery provisions of the Florida Rules of Civil Procedure

have been adopted by Commission rule.<sup>1</sup> Under Rule 1.340(a), Florida Rules of Civil Procedure, a party may not serve more than thirty interrogatories, including all subparts, unless the party files a motion which establishes good cause for exceeding the thirty interrogatory limitation and such motion is granted by the Court, or in this case, the Commission. Despite Public Counsel's acknowledgement and recognition that discovery in this proceeding is governed by the Florida Rules of Civil Procedure (unless modified by the Order Establishing Procedure), Public Counsel served a total of approximately six hundred (600) interrogatories on Southern States<sup>2</sup> prior to obtaining permission from the Commission to serve more than thirty (30) interrogatories, including all subparts. Public Counsel's acknowledgement that such permission was necessary under the Florida Rules of Civil Procedure is evidenced by its "Motion to Permit Additional Interrogatories" filed with the Commission on June 2, 1992.

3. The issue of placing a reasonable limitation on the number of interrogatories and document requests served on Southern States, as well as a number of other discovery issues, were discussed by the parties and Staff at a meeting held on June 25,

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<sup>1</sup>See Rule 25-22.028(4), Florida Administrative Code.

<sup>2</sup>Public Counsel had served approximately 600 interrogatories, including subparts, prior to June 25, 1992, the date on which the parties and the Commission Staff met to discuss resolution of pending discovery objections and issues. These interrogatories contained numerous identical requests for information and numerous requests for irrelevant information. See Southern States' Motion for Protective Order filed July 1, 1992 and Amended Motion for Protective Order filed July 2, 1992.

1992. On that date, Public Counsel's Motion to Permit Additional Interrogatories remained pending before the Commission. Southern States had timely filed a response to Public Counsel's Motion and requested "that the Commission establish a cap of 200 interrogatories, including subparts, and 100 document production requests."

4. During the June 25, 1992 meeting, agreements were reached pertaining to discovery which are set forth in the Order Establishing Procedure. As recognized in the Order Establishing Procedure, by agreeing to either respond or object to all of Public Counsel's outstanding discovery requests, Southern States implicitly agreed that Public Counsel should be permitted to serve more than 30 interrogatories, including all subparts. Southern States maintained its position that interrogatories, including all subparts, should be capped at 200 and document requests, including all subparts, should be capped at 100. Accordingly, the Order Establishing Procedure correctly determined that as a result of the June 25, 1992 meeting, Public Counsel's Motion to Permit Additional Interrogatories was rendered moot. Public Counsel's allegation to the contrary in its Petition for Reconsideration is unfounded.

5. Public Counsel requests the full Commission to reconsider the discretion exercised by the Prehearing Officer in ordering that interrogatories, including all subparts, be capped at 1,000 and document requests, including all subparts, be capped at 500. Public Counsel requests that it be permitted to serve 30 interrogatories and 30 document requests for each system at issue

in this proceeding. In other words, since there are 127 systems at issue in this proceeding, Public Counsel requests permission to serve at least 3,810 interrogatories and 3,810 document requests on Southern States.<sup>3</sup>

6. The premise for Public Counsel's request is that it would have been entitled to serve 30 interrogatories for each system had each system been filed as a separate rate case. Public Counsel's position is without merit. First, there is no requirement under statute or Commission rule that Southern States file a separate application for each water and wastewater system. Second, considering the fact that Southern States has filed a multiple systems application, the issue is whether Rule 1.340(a), Florida Rules of Civil Procedure, contemplates service of up to 30 interrogatories (in the first set) for each system included in one docketed application. Clearly, it does not. Such a determination would be akin to interpreting Rule 1.340(a) to permit a party in civil litigation to serve up to 30 interrogatories (in the first set) for each count in a complaint. There is no such authority under Rule 1.340(a), Florida Rules of Civil Procedure.

7. Southern States respectfully submits that Public Counsel's request is absurd and would unnecessarily cause Southern States to incur additional rate case expense ultimately borne by


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<sup>3</sup>Public Counsel's prayer for relief requests authority to file (Southern States presumes Public Counsel means "serve") 30 interrogatories and 30 document requests for each system at issue in this proceeding, without reference to subparts. If Public Counsel's proposal is granted, it could propound an infinite number of interrogatories and document requests on Southern States through the use of subparts.

its ratepayers. There is simply no justification for Public Counsel's request. The request should be denied. The Commission should affirm the Prehearing Officer's order establishing caps of 1,000 for interrogatories, including all subparts, and 500 for document requests, including all subparts.

WHEREFORE, Southern States respectfully requests the Commission deny Public Counsel's Petition for Reconsideration as such pertains to Public Counsel's request for permission to serve a minimum of 3,810 interrogatories and 3,810 document requests on Southern States.

Respectfully submitted,

  
KENNETH A. HOFFMAN, ESQUIRE  
LAURA L. WILSON, ESQUIRE  
Messer, Vickers, Caparello,  
Madsen, Lewis, Goldman & Metz, P.A.  
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(904) 222-0720

and

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


Attorneys for Applicant Southern  
States Utilities, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Southern States' Response to Public Counsel's Petition for Reconsideration of Order No. PSC-92-0638-PCO-WS (Order Establishing Procedure) by hand delivery, this 28th day of July, 1992, to the following:

Harold McLean, Esq.  
Office of Public Counsel  
111 West Madison Street  
Room 812  
Tallahassee, Florida 32399-1400

Matthew Feil, Esq.  
Catherine Bedell, Esq.  
Florida Public Service Commission  
Division of Legal Services  
101 East Gaines Street  
Room 226  
Tallahassee, Florida 32399

By:   
KENNETH A. HOFFMAN, ESQ.