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September 6, 1995

Blanca S. Bayo, Director
Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

Re: Docket No. 950495-WS

Dear Ms. Bayo:

Enclosed for filing in the above-referenced docket are the original and 15 copies of Citizens' Response to SSU's Motion for Protective Order; Citizens' First Motion to Conduct In Camera Inspections of Documents; Citizens' Second Motion to Compel; and Citizens' Second Motion to Postpone Date for Filing Intervenor Testimony.

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

Sincerely,


Harold McLean
Associate Public Counsel

HM:bsr

Enclosures

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DOCUMENT NUMBER-DATE
08737 SEP-6 95
FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

Application for rate increase for)
Orange-Osceola Utilities, Inc. In) Docket No. 950495-WS
Osceola County, and in Bradford,)
Brevard, Charlotte, Citrus, Clay,)
Collier, Duval, Highlands, Lake,) Filed: September 6, 1995
Lee, Marion, Martin, Nassau, Orange,)
Osceola, Pasco, Putnam, Seminole,)
St. Johns, St. Lucie, Volusia, and)
Washington Counties, by Southern)
States Utilities, Inc.)

**CITIZENS' RESPONSE TO SSU'S MOTION FOR PROTECTIVE ORDER;
CITIZENS' FIRST MOTION TO CONDUCT IN CAMERA INSPECTION OF
DOCUMENTS; CITIZENS' SECOND MOTION TO COMPEL; AND CITIZENS'
SECOND MOTION TO POSTPONE DATE FOR FILING INTERVENOR TESTIMONY**

The Citizens of the State of Florida, by and through JACK SHREVE, Public Counsel, (Citizens) move the commission to compel SSU to forthwith provide responses to lawful discovery, respond to objections and motion for protective order filed by SSU, seek other relief as set forth in this pleading, and say as follows:

INTRODUCTION:

The Citizens generally agree with the background furnished with SSU's August 29 motion. The Citizens will endeavor to respond to SSU's objections in order similar to their presentation to the commission by SSU. With respect to SSU's first category of objections which regard scope, however, the Citizens find economy in first responding generally, and then specifically.

With respect to the scope of discovery, SSU would isolate the various interests of Minnesota Power and Light from inquiry by the Citizens. This theme recurs throughout SSU's objections. SSU suggests that the Citizens' inquiry should be limited to three issues.¹ In suggesting that limitation, it should be noted that SSU has wholly failed to limit its own direct, prefiled evidence to those issues. A good example is the testimony of MPL Chief Executive Officer, Arend J. Sandbulte. Mr. Sandbulte ventures the purpose of his testimony to be:

The purpose of my testimony is to provide an overview of Minnesota Power's investment in SSU, to summarize shareholder concerns about that investment, and to confirm that our ability to continue to commit funds to SSU is based to a large degree on receiving fair, reasonable and timely rate relief. Provided this goal is met for Minnesota Power and its investors, we can and will continue to provide financial support necessary for facilities upgrades and the continued superior level of service that SSU customers have begun to expect.

(Sandbulte prefiled direct testimony, p. 4)

Implicit within Sandbulte's testimony is the notion that if MPL doesn't have its way with the Florida commission, it might not "have the ability to continue to commit funds"[and to do other

¹ (1) charges made directly or indirectly from TGI and MPL to SSU or "allocations" from TGI and MPL to SSU (interaffiliate transactions), (2) MPL and TGI's debt and equity investments in SSU and returns or interest thereon, and (3) income tax matters including treatment of investment tax credits, treatment of deferred taxes, treatment of CIAC, and information relevant to the parent-debt adjustment.

good things] on behalf of SSU. The Citizens would like to discover evidence which would test the veracity Sandbulte' testimony.

Sandbulte provides "an overview of Minnesota Power's investment in SSU". The Citizens are entitled to test whether Sandbulte correctly relates the investment to the commission.

Sandbulte invites the commission to consider stockholder concern as to the performance of the water and sewer utilities in Florida. The Citizens' discovery is designed to adduce evidence which will show that stockholders concern is more likely to center on other aspects of MPL activities, namely, its astonishing 162 million dollar entry into the auto auction business (including a financing subsidiary), its sudden abandonment of considerable liquidity, the "sluggish performance" of the non-regulated operations other than SSU, a one time 1994 write-off of securities investments², the stagnant electric service territory economy, the depressed paper prices which prevail in MPL's substantial paper business, and generally, the increased risk profile occasioned by each and all of these activities. Sandbulte's various exhibits gratuitously hint that stockholders' have much to be concerned about, but also imply, contrary to Sandbulte's assertions, that the water and sewer industry is but the tail of the dog.

² MP&L was and is a very substantial equity investor in interests other than the water and sewer business.

The Citizens are entitled to test Sandbulte's theory by discovering the evidence upon which it is, or should be, based; or perhaps the evidence which it ignores. Mr. Sandbulte invites the commission to action. He suggests that the commission should consider the returns earned by SSU from the perspective of "the MPL shareholder". The Citizens accept the relevance of that invitation; but the Citizens suggest the MPL stockholder has other concerns, such that SSU earnings are immaterial to that perspective. In any case, the Citizens are entitled to test the suggestion that "the MPL stockholder" is at all concerned with the earnings of SSU, given MPL's other activities. The Citizens suspect that MPL stockholders are swamped with other concerns, perhaps to the extent that association with MPL is an expensive liability for SSU.

While Mr. Sandbulte invites the commission to consider the word of securities rating agencies and analysts, the Citizens have the right to discover the evidence upon which those agencies and analysts may have based their opinions. This is particularly true where the agencies and analysts attach far greater significance to the other activities of MPL, to which a good deal of the Citizens' discovery is directed.

It should be noted that SSU's requested return on equity is more than one hundred basis points higher than that provided by the commission's leverage formula. Dr. Morin's explanation

notwithstanding, the Citizens' discovery is reasonably calculated to discover evidence which would explain why SSU is expected to contribute disproportionately to MPL's earnings.³

Finally, it must be recalled that it is SSU which invites Commission attention to the fate of MPL and to the concern of its shareholders. To the extent SSU does so as part of its rate application, the Citizens are entitled to adduce evidence through discovery which reflects on those issues.

Also with respect to the scope of discovery, SSU advances a theory which concerns "possession, custody, or control". The Citizens find that this objection reflects directly on the credibility of SSU. SSU would have the commission believe that it can produce the Chairman and Chief Executive Officer of Minnesota Power, but cannot produce the various documents requested by the Citizens because those documents are controlled by other entities which are within the control of MPL. Mr. Sandbulte, to whom the late Commission Jerry Gunter would have semi-affectionately referred to as the "Big Kahuna", has apparent authority to produce anything MPL possesses. When it serves SSU's interests, MPL is ever ready to help out, including spending the presumably valuable time of its CEO. When it's time for obfuscation, MPL is suddenly distant and not subject to discovery demands.

³ Dr. Morin is SSU's cost of capital witness.

While SSU argues that it has not acted "as one", the Citizens pay their bills to SSU as one, and in so doing, they pay money to MPL.

In summary, SSU ought not be permitted to avail itself of the resources of MPL when advantageous and to distance itself from MPL when advantageous. SSU customers pay a great deal of money to MPL and have an interest as to whether they obtain services reasonably related to the provision of utility service. SSU has explicitly invited the commission to consider the financial condition of MPL in this application. The Citizens are entitled to discover evidence which reflects SSU's minimal role in that condition.

SPECIFIC OBJECTIONS

Interrogatory 4

Please indicate the dates and the nature of all communications with the staff of the Florida Public Service Commission (staff) other than those that relate in any way to this docket.

The Citizens concede that at first blush, the interrogatory appears suspect. However, dealing with SSU requires that such measures be taken. In interrogatories 2 and 3 SSU was asked an otherwise identical question which sought matters relating to this docket. SSU's response includes no mention of

communications between SSU and Staff in the investigation of state wide rates or the investigation of commission jurisdiction as to SSU. Yet expenses--considerable expenses--allegedly incurred by SSU in both dockets are included in this case. Since it is likely that communication took place, SSU must believe that despite their asking for money in this docket, the communications occasioned by the investigation dockets are in no way related to this case.

The Citizens believe that any matter upon which SSU relies to recover money through rates is related to this docket.

Moreover, in the recent past the staff has solicited participation in numerous projects with a stated aim to "encourage and foster viable utilities" (See the Chuck Hill's Memorandum to William Talbott dated January 27, 1995 and its attached description of the projects.) Some of these projects/investigations include: the determination of the cost of capital for water and wastewater utilities; the determination of used and useful calculations for water and wastewater utilities; development of policies concerning acquisition adjustments; development of policies concerning service availabilities fees and CIAC; reuse economic and environmental issues; as assessment of the viability of water and wastewater utilities in Florida; and a rate case expense evaluation. Each of these subjects will be an issue in the instant rate proceeding.

The Citizens are entitled to discover to what extent staff discussions with SSU in these projects guided SSU's filing such that staff has had a hand in the development of the utility position on each of the contested issues.

In summary, while interrogatory 4 asks for staff communications other than those that relate in any way to this docket, the question correctly anticipates SSU's incomplete answer to interrogatories 2 and 3.

The Commission should either compel SSU to answer interrogatories 2 and 3 completely, or compel SSU to answer interrogatory 4.

Document Request 29

For each affiliated company participating in the consolidated tax return with MPL, state the amount of book net income or loss, for each of the past five years.

The Citizens are entitled to test Mr. Sandbulte's assertion that SSU's earnings are a material concern to MPL's shareholders, and to the securities rating agencies and analysts who authored Mr. Sandbulte's exhibits. If Mr. Sandbulte's testimony is important enough to be offered into evidence, it is important enough to test. The Citizens request is reasonably calculated to lead to evidence which will show to what extent MPL's myriad business interests contribute to the stockholder's and

analyst's views, to which Mr. Sandbulte invites commission attention.

In addition, SSU has a tax sharing agreement with MPL. The Citizens seek to determine to what degree and to what extent any taxes required of SSU due to the filing of a consolidated tax return and due to the tax sharing agreement are affected by the profits and losses of the other subsidiaries of MPL. The Citizens can not make such a determination without the requested information.

Document Request 51

Provide a copy of all of the minutes of the Topeka Group, Inc.'s Board of Directors Meetings for the years 1992 to date.

Document Request 52

Provide a copy of all of the minutes of Minnesota Power and Light's Board of Directors Meetings for the years 1992 to date.

SSU through the testimony of MPL CEO Sandbulte, invites the commission to consider the financial impact of SSU on MPL, and further invites the commission to base its decision on related matters. As argued above, SSU may be the least of MPL's problems, particularly if the exhibits to Sandbulte's testimony are considered. MPL has a number of other activities which has drawn the attention of rating agencies and analysts. SSU has opened the door to inquiry concerning both TGI and MPL. If SSU wants to

protect the secrets of MPL and of TGI, SSU should not invite the commission to rely on and consider the financial profile of both companies, particularly, MPL. The Citizens have the right to test the evidence offered by SSU.

Moreover, SSU has requested in the instant docket that customers pay \$209,000 for shareholder services charged to SSU by MPL. This allocated cost includes, among other things, board fees. The Citizens have the right to determine if the amount of time spent on SSU relative to MPL's other ventures is consistent with the proposed allocation of costs. This can not be done without a review of all of the board minutes. In addition, Citizens wish to explore the affiliate relationship between Lehigh Acquisition Corporation, Lehigh Corporation, and SSU. In addition, the Citizens are concerned about the acquisition of Lehigh Utilities and the distribution of the discount from book value allocated to the utility operations versus LAC's non-utility operations. The entire discount from book value was assigned to the non-utility operations of LAC because of the alleged decline in the real estate market, etc. However, subsequent to this claim, Sandbulte's exhibits show that LAC and/or Lehigh Corporation have made substantial profits on the sales of property. This information is contrary to prior claims of SSU, and of witnesses scheduled to testify in this case. If these substantial profits have been made, the circumstances and facts of the sales would necessarily be discussed in the board meetings.

An inquiry of these matters goes directly to the credibility of SSU and several of its witnesses, and probative of true investment in Lehigh.

For all of the above reasons, the Citizens should be permitted to review all of the requested minutes of the board of directors meetings: the minutes are relevant to issues raised by SSU.

Document Request 63

Provide copies of the outside independent auditors' work papers for each of the past three years for the company, Topeka Group, Inc., MPL, Buenaventura Lakes, East L. A. Services Corporation, and Lehigh Acquisition Corporation.

As with to Document Requests 51 and 52, the Citizens are concerned about the acquisition of Lehigh Utilities and the distribution of the discount from book value allocated to the utility operations versus Lehigh Acquisition Corporation's (LAC) non-utility operations. The entire discount from book value was assigned to the non-utility operations of LAC because of the alleged decline in the real estate market, etc. However, subsequent to this claim, the Citizens believe that LAC and/or Lehigh Corporation have made substantial profits on the sales of property. Moreover, the exhibits to Mr. Sandbulte's testimony show that LAC has realized a 56% ROE on property sales. This information is directly contrary to prior claims of SSU. In addition, it is directly contrary to the testimony of several

witnesses offered by SSU in this case. Profits realized on the sale of properties owned by LAC would be reflected in the auditors workpapers. In addition, as SSU admits, it has purchased land from LAC and thus has had transactions with this affiliate. The accounting for these transactions, is available to the Citizens only through the workpapers of the independent auditors. The Citizens note that in the Company's objection it indicates that land sales have taken place between LAC and SSU. However, in response to the Citizens' interrogatory 33, which asked the Company to identify sales of parcels of land between affiliates, among other things, the Company failed to identify any land sales between affiliates. The Citizens should have the right to determine independently if such land sales have occurred and to what degree the Company's response to Citizens' interrogatory 33 is inaccurate.

With respect to East L. A. Services Corporation (ELASCO), the reasonableness of SSU's allocation of SSU's and TGI's officer's time to ELASCO will be addressed in these workpapers. SSU authorized the independent auditors work, their work is admissible into evidence as party admissions. The Citizens are entitled to discover whether independent auditors share SSU's generous view of the extent to which SSU customers should pay expenses of ELASCO.

Finally, if there are other transactions between ELASCO and LAC and SSU such transactions will be identified in the auditors workpapers.

Document Request 64

Make available for review the books and records of Lehigh Acquisition Corporation.

Document Request 65

Please provide a copy of the audited, if available, or unaudited if audited is not available, financial statements (balance sheet, income statement, cash flow statement, and any notes attached thereto) of Lehigh Acquisition Corporation.

In the Lehigh Case, SSU assured the commission that the allocation of full book value purchase price to Lehigh Utilities was reasonable. They led the commission to believe while the utility was in excellent shape, that the land which came with the deal was sadly depreciated. Although SSU received the benefit of a 60% discount off book value, the customers of Lehigh paid rates based upon an investment in Lehigh utility assets which reflected no discount whatever. SSU's witnesses represented that the land was worth far less than book value.

Utility witness Sandbulte's exhibits, and other matters within the Citizens' knowledge, shows LAC's astonishing return on land which this utility and several of its witnesses said was much depreciated. Examination of LAC's books and records will reflect directly on the credibility of SSU and several of its witnesses in this case.

Document Request 72

Provide a copy of all state income tax returns for the

company, MPL, topeka Group, Inc., and Lehigh Acquisition Corporation for the years 1992, 1993, and 1994 including a complete copy of any and all schedules and work papers.

The state income tax returns frequently show information different than what is included in the Company's MFR for state income taxes. There are different methods of calculating state income taxes shown on the state tax return. The Citizens are entitled to determine the accuracy of the state income tax expense requested in the instant docket against how the Company (or its parent) calculates this expense on its state tax return. To the extent SSU customer's are being required to pay the state income taxes of the utility, the Citizens are entitled to discover the tax returns which gave rise to the tax liability.

With respect to LAC, the Citizens withdraw its request as long as all other documents with respect to LAC are provided as requested by the Citizens. In the absence of the other documents requested, the state income tax return is the only means by which this information can be known.

Document Request 82

Provide the 1994 consolidated financial statements of the following entities: BNI Coal; Lake Superior Paper Industries; Topeka Group, Inc.; Heater Utilities; Lehigh Acquisition Corporation; East L.A. Service; SSU; and Minnesota Power and Light.

As indicated above, MPL allocates certain costs of SSU and

other affiliates of MPL. One such expense is shareholder services which is allocated based upon equity. The Citizens have the right to check the reasonableness of the allocation method proposed by the Company by reviewing the financial statements of the subsidiaries which contribute to the allocation factor. The mere fact that Citizens can obtain the equity of the parent and the equity of SSU to check the calculation is not sufficient. The Citizens need to know the numerator of the allocation factor for each subsidiary to ensure that the allocation factor is fair. For example, if one of MPL's subsidiaries has negative equity, it presumably would not be allocated any shareholder costs. However, just because the subsidiary has no equity does not mean that it should not contribute to a portion of the shareholder expenses. This type of information can not be obtained by examining only the equity of MPL, as this is a consolidated amount that would include both positive and negative equity amounts. Furthermore, to the extent the Citizens want to make an allocation of these or other costs on a basis different than that chosen by MPL, only the financial statements provide information which would show the need and basis for such a reallocation. For example, the allocation might be more correctly based on net plant, instead of equity. The only way this kind of information can be obtained is from the financial statements of the various subsidiaries of MPL.

Document Request 83

Provide the non-consolidated financial statements of Minnesota Power & Light for each year since 1980.

The articulated objection runs primarily to the period of time sought. This information was sought to determine MPL's actual investment in SSU, a matter to which Mr. Sandbulte directly speaks, and to which much SSU evidence is directed. In order to determine MPL's actual investment in SSU as of today, the Citizens need the non-consolidated financial statements for each year since SSU or one of its parents was acquired by MPL. This is needed for every year because in order to determine MPL's actual investment, the earnings of subsidiaries in each year, needs to be removed from the investment in subsidiaries which would be shown on the non-consolidated financial statements. In addition, over the years, SSU, MPL, TGI, and other parent companies of SSU have sold property which resulted in gains on these sales. Again to ascertain MPL's actual investment in the utility operations of SSU, these gains would need to be removed from the investment in subsidiaries which is shown on the requested financial statements. The Citizen's request is not over broad as suggested by SSU: it is very specific with respect to the documents in question.

Document Request 86

Provide copies of all travel entertainment expense vouchers of MPL's senior management and executives for the year 1994.

The Citizens seek only travel and entertainment expense vouchers of MPL's senior management to the extent that such

expenses are charged to SSU. In addition, to the extent that any senior managements time, expenses, or salaries are in any way allocated to SSU, OPC seeks all of the travel vouchers for these individuals. OPC should has the right to determine if the allocations are consistent with the work performed. If for example, a member of senior management spends all of his time traveling to functions which are clearly public relations-related or lobbying-related, then OPC should be able to challenge the allocation of this persons salary or time to SSU as the Commission does not normally permit recovery of such costs. OPC can not independently check the reasonableness of such allocations with out supporting documentation such as travel and entertainment expense vouchers. To put is simply, for this request for production and for others, if SSU wants money for it, the Citizens are entitled to explore what, if anything, they get for their money.

Document Requests 91

Provide all invoices received from any law firm by Topeka Group, Southern States Utilities, and MPL (to the extent such costs were charged to the company) for the years 1992, 1993, 1994, and 1995 to date, and furnish the associated voucher. (Exclude law firms hired in connection with the instant rate case)

Document Request 93

Provide all invoices received from any consultant by Topeka Group, Southern States Utilities, and MPL (to the extent such costs were charged to the company) for the years 1992, 1993, 1994, and 1995 to date, and furnish the associated voucher. (Exclude consultants hired in connection with the instant rate case)

The Citizens seek only invoices from law firms and consultants to Topeka Group, Southern States, and MPL to the extent that such costs were charge to the SSU. OPC does not seek invoices that are not charged to SSU.

Document Request 116

Provide documents showing the derivation of Minnesota Power & Light Company's and the Topeka Group's consolidated financial statements for the years 1993 and 1994. These documents should include, but are not limited to, the work papers showing the trial balance or balance sheet and income statement of each subsidiary and the applicable consolidating adjusting entries and all related notes, adjustments, and eliminations used to calculate MPL's consolidated financial statements.

The Citizens withdraw this request because the documents were apparently provided in response to Document Request 147.

Document Request 112

Please provide a copy of any orders from the Minnesota Public Service Commission issued within the last 3 years concerning Minnesota Power & Light Company.

Document Request 113

Please provide a copy of any orders from any state public service commission which regulates Heater Utilities Inc. issued within the last five years.

The Citizens amend each of their document requests such that the words "rate case" be inserted immediately before the word "orders" in each of the above requests. Whereas SSU's objection represents "SSU has provided OPC with orders pertaining to the

subject matters identified above as relevant . . ." The Citizens are unaware of having been provided with the enumerated material.

Document Request 127

Provide a copy of all internal memorandum, reports, studies, and other documents between or by employees of the company, Topeka, MPL between or by consultants of the company, Topeka, and MPL and all memorandum to files which address the sale of any properties owned by SSU or Lehigh Acquisition Corporation.

As detailed above, the Citizens wish to test the credibility of SSU and its several witnesses by inquiring as to whether their representations regarding the value of LAC acquired properties. SSU said that the properties were much depreciated: current evidence from Witness Sandbulte suggests that there were much appreciated. The Citizens believe that a ROE of 56% in one area of MPL's operations would generate documents probative of that issue. Moreover, the Citizens are entitled to explore the issue of gain on sale as it may arise in its case.

Document Request 108

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.

Document Request 111

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

The scheme articulated by SSU in its objection to the above referenced document requests is unsatisfactory, and contrary to the law of discovery in Florida. SSU expects the commission to rule that the Citizens may call on-site to be provided whatever documents SSU sees fit to produce, the question of privilege being totally entrusted to the good offices of SSU. Neither the Citizens nor the commission may visit two principal issues: whether there is actually any claim of privilege asserted, and whether if asserted, it is justifiably asserted.

The Citizens assert that the law of Florida entrusts the determination of privilege not to one of the parties, but to the forum, in this case, the Commission. SSU's objection contains no claim of privilege with respect to Document Requests No. 108 or 111. SSU offers only to provide on-site inspection of documentation "which does not fall within one of the applicable privileges." SSU makes no attempt to say whether any such documents exist. Whether any such documents do exist and whether any privilege is asserted would be improperly left to the sole discretion of SSU.

The Citizens therefore request the Commission to conduct an in camera inspection of all documents withheld by SSU. It is well settled Commission policy to conduct an in camera inspection of documents upon a claim of privilege. This procedure was employed by Chairman Clark as prehearing officer in the Southern

Bell case (docket 920260-TL), as well as by the entire Commission when reviewing Chairman Clark's rulings.

Last year the Florida Supreme Court decided Southern Bell Telephone and Telegraph Company v. J. Terry Deason, et. al., So.2d 632 (Fla. 1994), where the court rendered pervasive directions respecting the claim of attorney-client privilege and attorney work product in a corporate context. That opinion affirms, in relevant part, order PSC-93-0294-PCO-TL, issued by the prehearing Officer in that case, Susan F. Clark, and affirmed on a full panel review by Order PSC-93-0517-FOF-TL. The order stand for several premisses relevant here: That the burden of establishing privilege is with the objecting party; that in order to minimize the threat of corporations cloaking information with the attorney-client privilege in order to avoid discovery, claims of privilege in the corporate context "will be subjected to heightened level of scrutiny. The Court also set forth enumerated criteria by which such claims were to be weighed:

- (1) The communication would not have been made but for the contemplation of legal services;
- (2) the employee making the communication did so at the direction of his or her corporate superior;
- (3) the superior made the request of the employee as

part of the corporation's effort to secure legal advice or services;

(4) the content of the communication relates to the legal services being rendered, and the subject matter of the communications is within the employee's duties;

(5) the communication is not disseminated beyond those persons, who because of the corporate structure, need to know its contents.

See also Order Resolving Discovery Issues re: In Camera Inspection of Documents, order no. PSC-94-0672-PCO-TL issued June 3, 1994. The Citizens request the Commission to apply the criteria set forth by the Florida Supreme Court to each document withheld by SSU.

Document Request 121

Please provide any reports, studies, or other documents in the company's custody or control which address the subject of economies of scale of the company's storage, treatment, collection, and distribution systems or the storage, treatment, collection, and distribution systems water and sewer companies in general.

Without identifying any document, SSU again hints at a privilege claim. There is no claim of privilege asserted with respect to the requested document; there is no representation that

such document exists. SSU should be ordered to either produce such document(s) or to object to their production. For the same reasons set forth regarding document request 111, the Citizens request the Commission to conduct an in camera inspection of all documents withheld by SSU and determine whether the documents are privileged in whole or in part.

Document Request 5

Provide a diskette version of [Exhibit (JFG-1)] and indicate the program used to create the exhibit.

Document Request 7

Provide a diskette version of [Exhibit (JFG-2)] and indicate the program used to create the exhibit.

The hard copy of the workpapers look as though a typical spreadsheet program was used to develop the workpapers. In addition, the workpapers provided in response to Document Request 6, do not show all of the assumptions used. These assumptions/calculations would be included in the formulae contained on the diskette. They are not depicted on the hard copy of the workpapers.

The Citizens have absolutely no interest in Mr. Guastella's allegedly proprietary interest in soft ware. However, to the extent that proprietary considerations frustrate discovery, the commission has well developed rules to protect proprietary information. The assumptions which support the various formulae

are discoverable.

Moreover, the Citizens have a right to examine the calculations upon which an expert witness relies. SSU should not be able to hide that information behind the proprietary claim of a witness which they chose.

Document Request 45

Provide a copy of the company's standard general ledger system.

The Citizens seek only access to the information contained on the Company's General Ledger System. The Citizens do not seek the software program.

Citizens' second motion to postpone the date for filing intervenor testimony

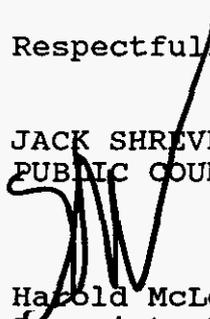
SSU has frustrated the Citizens' right to discovery without justification, and without excuse. The Citizens right to a meaningful point of entry into the administrative process includes full discovery rights. Discovery is a process where the response to a discovery request is frequently the basis for further discovery focusing more narrowly on an issue. By refusing to provide the documents requested by the Citizens, the process of building on that discovery and preparing follow-up questions is irrevocably delayed. Every day lost at this point takes a day away

from our ability to prepare testimony responding to SSU's case. In order to address the irrevocable delay caused by SSU simply ignoring production of discovery on its due date, the Citizens request the Commission to postpone, on a day-for-day basis, the filing date for intervenor testimony until SSU fully satisfies these discovery requests. Intervenor testimony is now tentatively scheduled for November 20, 1995. The day-for-day postponement should be determined using that date as a starting point.

WHEREFORE, The Citizens of the State of Florida move the Commission to enter its order to conduct an in camera inspection of every document withheld on the basis of a claim of privilege; to compel SSU to produce all other documents so far withheld; and to postpone the date for filing intervenor testimony on a day-for day basis for every day of delay encountered by the Citizens in receiving these documents.

Respectfully submitted,

JACK SHRIVE
PUBLIC COUNSEL


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Attorneys for the Citizens
of the State of Florida

CERTIFICATE OF SERVICE
DOCKET NO. 950495-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 6th day of September, 1995.

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