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September 25, 1995

Ms. Blanca S. Bayo, Director
Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Betty Easley Conference Center
Room 110
Tallahassee, Florida 32399-0850

HAND DELIVERY

Re: Docket No. 950495-WS

Dear Ms. Bayo:

Enclosed herewith for filing in the above-referenced docket on behalf of Southern States Utilities, Inc. ("SSU") are the following documents:

1. Original and fifteen copies of SSU's Response to Office of Public Counsel's Fourth Motion to Compel and Fourth Motion to Postpone Date for Filing Intervenor Testimony; and
2. A diskette in Word Perfect 6.0 containing a copy of the document entitled "9-25Mot."

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

LEG 1 KAH/rl

LIN 5 cc: All Parties of Record

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APP _____
CAF _____
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09485 SEP 25 95

FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application by Southern States Utilities, Inc. for rate increase and increase in service availability charges for Orange-Osceola Utilities, Inc. in Osceola County, and in Bradford, Brevard, Charlotte, Citrus, Clay, Collier, Duval, Hernando, Highlands, Hillsborough, Lake, Lee, Marion, Martin, Nassau, Orange, Osceola, Pasco, Polk, Putnam, Seminole, St. Johns, St. Lucie Volusia and Washington Counties.

Docket No. 950495-WS

Filed: September 25, 1995

SSU'S RESPONSE TO OFFICE OF PUBLIC COUNSEL'S FOURTH MOTION TO COMPEL AND FOURTH MOTION TO POSTPONE DATE FOR FILING INTERVENOR TESTIMONY

Southern States Utilities, Inc. ("SSU"), by and through its undersigned counsel, and pursuant to Rule 25-22.037(2)(b), Florida Administrative Code, hereby files its Response to the Office of Public Counsel's ("OPC") Fourth Motion to Compel and Fourth Motion to Postpone Date for Filing Intervenor Testimony, and in support thereof, states as follows:

1. OPC's Motion to Compel a Revised Response to Interrogatory No. 68 should be denied. SSU maintains that OPC has sufficient information to determine whether or not charges from Minnesota Power & Light ("MP&L") to SSU are reasonable; however, SSU hereby agrees to provide the requested salary information to the extent it is available, subject to confidential treatment, within fourteen days of this response. SSU does not intend and should not be compelled to "reconcile" the hourly rate charged SSU to the equivalent hourly salary of a particular MP&L employee. A reconciliation is merely a comparison or tying of numbers. As

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

such, OPC is just as capable of making that comparison with the information to be provided as SSU is. See Fla. R. Civ. Pro. 1.340 (c).

2. OPC's Motion to Compel a Revised Response to Interrogatory No. 81 should be denied. Again, SSU maintains that OPC has sufficient information to determine whether MP&L charges to SSU are reasonable; however, SSU hereby agrees to provide the requested salary and benefit information to the extent it is available, subject to confidential treatment, within fourteen days of this Response.

3. OPC's Motion to Compel a Revised Response to Document Request No. 121 should be denied. The gist of OPC's argument is that SSU's response is contrary to the objection SSU made in its August 29, 1995 Objections to OPC's First Set of Interrogatories and Document Requests and Motion for Protective Order. OPC apparently would have been satisfied if SSU had provided no response at all, rather than one which stated no information responsive to the request was "available." As indicated in SSU's August 29, 1995 Objections and Motion and SSU's September 13, 1995 Response to OPC's September 6, 1995 Second Motion to Compel, SSU has requested that an economies of scale study be prepared which SSU asserts will be subject to the work product privilege and, therefore, exempt from discovery unless and until such time as said study is completed and formulates the basis for the opinion of a witness who will testify at hearing. As indicated in SSU's Response to Document Request No. 121, no studies have been

completed. OPC has not made the requisite showing of need to compel production of work product in accordance with Rule 1.280 of the Florida Rules of Civil Procedure, and neither SSU's response nor OPC's manipulation thereof serve as a legally sufficient basis for a waiver of the work product privilege.

4. OPC's Motion to Compel a Revised Response to Document Request No. 144 should be denied. This OPC request and SSU's response is a simple case of OPC's interpreting the question one way and SSU's interpreting it in another way. Considering the reasonableness of SSU's interpretation of this particular document request and the willingness of OPC to attach broad, ambiguous and undefined interpretations to this and many other of their discovery requests, the Commission should find a Motion to Compel inappropriate in this instance. As to SSU's interpretation, SSU interpreted the term "memorandum" to include only those documents which were of the same kind, class, and nature as the "reports or studies" also referred to in this document request. Essentially, SSU applied the rule of ejusdem generis to interpret the request. SSU also notes that OPC's use of "or" rather than "and" in listing the series of requested items and the possible significance of OPC's specifically identifying "memorandum" rather than the defined term "documents" only add to the ambiguity and confusion.

Document Request No. 144 is but a minor example of the interpretative quandary presented by OPC's discovery. On the whole, OPC's discovery is a labyrinth of overlapping and ambiguous requests which SSU has made strenuous efforts to interpret and

respond to in a timely manner. The Commission should take notice that rather than bringing the discovery process to a virtual standstill by requesting clarification through objections to the vast bulk of OPC's discovery requests,¹ SSU elected to be as cooperative and responsive to OPC's requests as SSU reasonably could.

OPC has not contacted SSU prior to the filing of any of its first four Motions to Compel so SSU has had no opportunity to resolve discovery disputes which are capable of resolution. Further, OPC's failure to first seek resolution of potential discovery disputes between the parties leaves SSU with no advance notice of OPC's strained interpretations of OPC's discovery requests and has established a pattern of requiring the Prehearing Officer and/or the Commission to devote its resources to resolving virtually every difference of opinion and/or dispute between the parties concerning discovery matters. The result is an unnecessary waste of the parties' and Commission's time and resources to the ultimate detriment of the ratepayers. Interestingly enough, if

¹SSU has previously stated its complaint with OPC's definition of the word "company." A reading of Interrogatory No. 81 typifies the confusing use of this term. Interrogatory No. 68, similar to Document Request No. 144, is an example of OPC's confusing the conjunctive "and" with the disjunctive "or" by the use of both: "and/or." A number of OPC's requests are unclear in whether they refer to cash expenditures or the booked, amortized portion thereof, and a number are unclear as to whether they solicit expense items, capital items, or both in soliciting the "cost" associated with some activity. The requests also are replete with instances of redundancy and overlap, and OPC's definition of the term "document" is impermissibly broad under the court's holding in Caribbean Security Systems, Inc. v. Security Control Systems, Inc., 486 So.2d 654 (Fla. 3rd DCA 1986).

this case were being tried before the Division of Administrative Hearings, OPC would be required to certify that it had conferred with SSU in a good faith effort to resolve each discovery dispute and was unable to do so prior to filing a motion to compel.² SSU suggests that such a procedure is appropriate for this rate case as well as other Commission proceedings and would request OPC to engage in such discussions with SSU before filing a motion to compel. The Commission's time and resources should be reserved for legitimate discovery disputes.

5. OPC's Motion to Compel a Response to Document Request No. 154 should be denied. From its involvement in Docket No. 920655-WS, OPC knew that the documents sought through its present Document Request No. 154 were subject to a claim of privilege. Thus, OPC cannot claim to be prejudiced by SSU's asserting privilege in its response. SSU's response to Document Request No. 154 was served on August 29, 1995 the same day SSU filed its Objections and Motion for Protective Order. Thus, SSU's assertion of privilege was timely. Moreover, since work product is exempt from discovery, failure to make a timely objection does not constitute a waiver of the privilege. See, e.g., Truly Nolen Exterminating, Inc. v. Thomasson, 554 So.2d 5 (Fla. 3rd DCA 1989); Order No. PSC-93-0340-PCO-WS issued March 4, 1993 in Docket No. 920655-WS. SSU maintains that the referenced documents are subject to the attorney-client privilege and, therefore, are exempt from discovery. SSU's assertion of the attorney-client privilege with respect to these

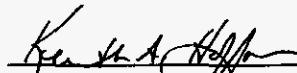
²Rule 60Q-2.019(2), Florida Administrative Code.

very same documents was not challenged by OPC in Docket No. 920655-WS and the issue should not be revisited in this case.

6. The Commission should reject OPC's request for additional time to prefile its direct testimony. As indicated in SSU's September 13, 1995 Response to OPC's Second Motion to Compel, no comprehensive presumption of prejudice should attach to discovery responses in dispute, particularly at this early stage of the case.

WHEREFORE, for the foregoing reasons, SSU respectfully requests that a protective order be entered in accordance with SSU's objections and stipulations set forth above.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing SSU's Response to Office of Public Counsel's Fourth Motion to Compel and Fourth Motion to Postpone Date for Filing Intervenor Testimony was furnished by U. S. Mail to the following this 25th day of September, 1995:

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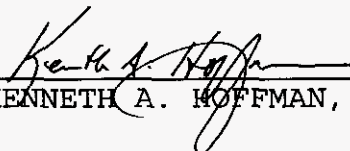
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