

94

RUTLEDGE, ECENIA, UNDERWOOD, PURNELL & HOFFMAN

PROFESSIONAL ASSOCIATION
ATTORNEYS AND COUNSELORS AT LAW

STEPHEN A. ECENIA
KENNETH A. HOFFMAN
THOMAS W. KONRAD
R. DAVID PRESCOTT
HAROLD F. X. PURNELL
GARY R. RUTLEDGE
R. MICHAEL UNDERWOOD
WILLIAM B. WILLINGHAM

POST OFFICE BOX 551, 32302-0551
215 SOUTH MONROE STREET, SUITE 420
TALLAHASSEE, FLORIDA 32301-1841

TELEPHONE (904) 681-6788
TELECOPIER (904) 681-6515

GOVERNMENTAL CONSULTANTS
PATRICK R. MALOY
AMY J. YOUNG

**ORIGINAL
FILE COPY**

October 9, 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. are the original and fifteen copies of Southern States Utilities, Inc.'s Objection to Interrogatory 241 from the Office of Public Counsel's Seventh Set of Interrogatories and Objection to Document Requests 203, 206 and 216 from the Office of Public Counsel's Seventh Set of Requests for Production of Documents and Motion for Protective Order.

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

KAH/rl

cc: All Parties of Record

- ACK
- AFA
- APP
- CAF
- CMU
- CTR
- EAG
- LEG
- LIN
- OPC
- RCH
- SEC
- WAS
- OTH

RECEIVED & FILED

FPSC-RECORDS/REPORTING

DOCUMENT NUMBER-DATE
09958 OCT-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 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: October 9, 1995

**SOUTHERN STATES UTILITIES, INC.'S OBJECTION TO
INTERROGATORY 241 FROM THE OFFICE OF PUBLIC COUNSEL'S
SEVENTH SET OF INTERROGATORIES AND OBJECTION TO
DOCUMENT REQUESTS 203, 206 AND 216 FROM THE OFFICE
OF PUBLIC COUNSEL'S SEVENTH SET OF REQUESTS FOR
PRODUCTION OF DOCUMENTS AND MOTION FOR PROTECTIVE ORDER**

SOUTHERN STATES UTILITIES, INC., ("SSU") by and through its undersigned counsel, and pursuant to Rules 25-22.037(2) and 25-22.034, Florida Administrative Code, and Rule 1.280 of the Florida Rules of Civil Procedure, hereby files its objections to Interrogatory No. 241 from the Office of Public Counsel's ("OPC") Seventh Set of Interrogatories and Document Request Nos. 203, 206 and 216 from the OPC's Seventh Set of Requests for Production of Documents and hereby moves for a protective order relieving SSU from responding to said discovery requests. In support of this Objection and Motion, SSU states as follows:

1. On September 29, 1995, OPC served SSU with OPC's Seventh Set of Interrogatories and Seventh Set of Requests for Production of Documents.

DOCUMENT NUMBER-DATE
09958 OCT-9th
FPSC-RECORDS/REPORTING
2488

2. Interrogatory No. 241 in said Seventh Set of Interrogatories states as follows:

Please explain the accounting treatment of the Lehigh Escrow funds on both the books of SSU and Lehigh Corporation and their parent companies. Identify any accounts and the amounts on the Company's books which relate to this escrow fund. Provide the same information for Lehigh Corporation and its parents. Please explain why the entire amount of these escrowed funds should not be considered CIAC.

3. SSU objects to the above interrogatory to the extent it solicits detailed accounting information from the books and records of Lehigh Corporation and its parents (collectively referred to as "Lehigh Corp."). As argued in SSU's prior objections to OPC discovery and SSU's prior responses to OPC's motions to compel, SSU does not have possession, custody or control over the books and records of affiliated companies. OPC has made no showing that SSU and Lehigh Corp. acted "as one" in filing the instant rate proceeding or in transacting business related to the escrow fund OPC references. A showing as to one or the other is an essential prerequisite to OPC's obtaining information in the possession of Lehigh Corp. through discovery requests served on SSU. Medivision of East Broward County, Inc. v. Department of Health and Rehabilitative Services, 488 So.2d 886 (Fla. 1st DCA 1986); Michelin Tire Corp. v. Roose, 531 So.2d 361 (Fla. 4th DCA 1988). In response to the objectionable portion of Interrogatory No. 241, SSU can only state an understanding or belief of the pertinent Lehigh Corp. booking entries, but SSU has no more control over Lehigh Corp's books than SSU would have over the books of any other developer with whom SSU does business. As a matter of law, the

affiliate relationship between SSU and Lehigh Corp. is irrelevant absent a finding that SSU and Lehigh Corp. acted "as one" respecting the matters identified above.

4. Document Request No. 203 in the Seventh Set of Requests for Production of Documents states as follows:

Provide a copy of the two most recent rate case Orders issued by any commission which regulates Superior Water Light & Power Company.

5. SSU objects to this Document Request No. 203 for the same reasons SSU objected to Document Request No. 113, which sought similar information for Heater Utilities, Inc. Moreover, SSU conducts absolutely no business with Superior Water, Light & Power Company, and no charges are made directly or indirectly between the two companies. The request seeks information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. See Calderbank v. Cazares, 435 So.2d 377 (Fla. 5th DCA 1993); Krypton Broadcasting v. MGM-Pathe Communications Co., 629 So.2d 852 (Fla. 1st DCA 1994). Further, the request seeks information not within SSU's possession, custody or control and which OPC could just as readily obtain as SSU can from conducting research of the orders of various regulatory commissions. Additional authority and argument supporting these objections is as set forth in SSU's August 29 Objections and Motion for Protective Order and in the numerous discovery pleadings SSU filed thereafter.

6. Document Request No. 206 in the Seventh Set of Requests for Production of Documents states as follows:

Please provide a copy of any research, reports, letters, or memos prepared or conducted by the Company or on its behalf concerning the Lehigh Escrow funds or Lehigh Corporation.

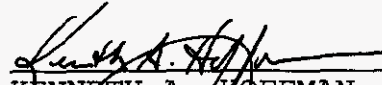
Document Request No. 216 in the Seventh Set of Requests for Production of Documents states as follows:

Provide a copy of all documents prepared by or for the Company concerning the purchase or [sic] the Orange/Osceola system.

7. SSU objects to the above Document Request Nos. 206 and 216 to the extent they solicit information which includes attorney-client privilege and attorney work product matter exempt from discovery. Rule 1.280, Fla. R. Civ. Pro. and Southern Bell Telephone & Telegraph Co. v. Deason, 632 So.2d 1377 (Fla. 1994).

WHEREFORE, for the foregoing reasons, SSU respectfully requests that the Commission grant SSU's Motion for Protective Order respecting the OPC discovery requests identified hereinabove.

Respectfully submitted,



KENNETH A. HOFFMAN, ESQ.
WILLIAM B. WILLINGHAM, ESQ.
Rutledge, Eeenia, Underwood,
Purnell & Hoffman, P.A.
P. O. Box 551
Tallahassee, FL 32302-0551
(904) 681-6788

and

BRIAN P. ARMSTRONG, ESQ.
MATTHEW FEIL, ESQ.
Southern States Utilities, Inc.
1000 Color Place
Apopka, FL 32703
(407) 880-0058

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Objection and Motion for Protective Order by U.S. Mail to the following this 9th day of October, 1995:

Lila Jaber, Esq.
Division of Legal Services
2540 Shumard Oak Boulevard
Gerald L. Gunter Building
Room 370
Tallahassee, FL 32399-0850

Mr. W. Allen Case
President
Sugarmill Woods Civic Asso.
91 Cypress Blvd., West
Homosassa, FL 34446

Charles J. Beck, Esq.
Office of Public Counsel
111 W. Madison Street
Room 812
Tallahassee, FL 32399-1400

Michael B. Twomey, Esq.
P. O. Box 5256
Tallahassee, FL 32314-5256

Joseph Coriaci, Pres.
Marco Island Civic Asso.
413 S. Barfield Drive
Marco Island, FL 33937

Mr. Morty Miller
President
Spring Hill Civic Asso., Inc.
P. O. Box 3092
Spring Hill, FL 34606


KENNETH A. HOFFMAN, ESQ.