



JACK SHREVE
PUBLIC COUNSEL

STATE OF FLORIDA
OFFICE OF THE PUBLIC COUNSEL

c/o The Florida Legislature
111 West Madison Street
Room 812
Tallahassee, Florida 32399-1400
904-488-9330

November 16, 1995

ORIGINAL
FILE COPY

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

Re: Docket No. 920199-WS
950495-WS

Dear Ms. Bayo:

Enclosed for filing in the above-referenced docket are the original and 15 copies of Citizens' Reply.

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

Sincerely,

Charles J. Beck
Charles J. Beck
Deputy Public Counsel

- ACK 2
- AFA 3 CJB:bsr
- APP _____ Enclosures
- CAF _____
- CMU _____
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- EAG _____
- LEG 1
- LIN 5
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FPSC-BUREAU OF RECORDS

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FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

Docket No. 950495-WS

Filed: November 16, 1995

REPLY

The Citizens of Florida ("Citizens"), by and through Jack Shreve, Public Counsel, file this reply to the pleading filed by Southern States Utilities ("SSU") on November 13, 1995, entitled "Southern States Utilities, Inc.'s, response to Office of Public Counsel's tenth motion to compel, tenth motion to postpone date for filing intervenor testimony, and request for in camera inspection of document."

1. SSU's pleading incorrectly asserts that the Citizens do not contest the privileged nature of the letter. SSU pleading at 3. Although the letter is marked "privileged," marking a document "privileged" does not make the document privileged.

2. SSU has the burden of establishing the attorney-client privilege. Southern Bell Telephone & Telegraph Company v. Deason,

632 So.2d 1377 (Fla. 1994). Under the standard set forth in Southern Bell, SSU must show, among other things, that the communication would not have been made but for the contemplation of legal services; that the content of the communication relates to the legal services being rendered; and that the communication is not disseminated beyond those persons who, because of the corporate structure, need to know its contents. SSU's pleading fails to meet any of these standards.

3. Even had SSU been able to show that the document was privileged, disclosure of the document is a basis for waiving the privilege. In Florida, the issue is far from settled as to whether inadvertent disclosure of an otherwise privileged document waives that privilege. Beane and Nailos, Inadvertent Disclosure of Attorney-Client Privileged Material: Putting the Horse Back in the Barn, The Florida Bar Journal, October, 1995, p.67.

4. SSU can not now, for the first time, claim accountant-client privilege. The disputed document was one of many produced at the offices of Price Waterhouse. If SSU had intended to assert this privilege, no documents held by SSU's outside auditors would have been produced in the first place.¹ It was only after the Citizens requested a copy of this document that SSU concluded an

¹ SSU also fails to explain how a document apparently belonging to Lehigh Corporation wound up in the workpapers of SSU's accountant. If Lehigh Corporation were truly separate, documents such as the one in dispute here would not be located in the files of SSU's outside accountant.

accountant-client privilege applies. SSU knowingly waived any accountant-client privilege that might apply when documents were made available for review at the offices of Price-Waterhouse.

5. Contrary to claims made in SSU's pleading, the Citizens are entitled to an in camera hearing to determine whether this document is privileged. Aetna Insurance Company v. Dr. Steven R. Koganovsky et. al., 20 Fla. L. Weekly D2342 (Fla. 4th D.C.A. October 18, 1995).

Respectfully submitted,

JACK SHREVE
PUBLIC COUNSEL



Charles J. Beck
Deputy Public Counsel

Office of Public Counsel
c/o The Florida Legislature
111 West Madison Street
Room 812
Tallahassee, FL 32399-1400

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 16th day of August, 1995.

*Ken Hoffman, Esq.
William B. Willingham, Esq.
Rutledge, Ecenia, Underwood,
Purnell & Hoffman, P.A.
P.O. Box 551
Tallahassee, FL 32302-0551


Brian Armstrong, Esq.
Matthew Feil, Esq.
Southern States Utilities
General Offices
1000 Color Place
Apopka, FL 32703

Kjell W. Petersen
Director
Marco Island Civic Association
P.O. Box 712
Marco Island, FL 33969

*Lila Jaber, Esq.
Division of Legal Services
Fla. Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399

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

Arthur I. Jacobs, Esq.
Jacobs & Peters, P.A.
Post Office Box 1110
Fernandina Beach, FL
32035-1110



Charles J. Beck
Deputy Public Counsel