

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application for rate) DOCKET NO. 950495-WS
increase and increase in service) ORDER NO. PSC-95-1503-CFO-WS
availability charges by Southern) ISSUED: December 5, 1995
States Utilities, Inc. 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.)

ORDER ON 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

On October 9, 1995, Southern States Utilities, Inc.'s, (SSU or utility) filed an Objection to Interrogatory 241 from the Office of Public Counsel's (OPC) Seventh Set of Interrogatories and Objection to Document Requests 203, 206, and 216 from OPC's Seventh Set of Requests for Production of Documents and Motion for Protective Order. OPC did not file a response to this motion.

Interrogatory No. 241

By Interrogatory No. 241, OPC requests the following information:

Please explain the accounting treatment of the Lehigh [e]scrow 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.

SSU objects to this interrogatory to the extent it solicits detailed accounting information from the books and records of Lehigh Corporation and its parents (Lehigh). SSU argues that it

DOCUMENT NUMBER-DATE

12123 DEC-5 95

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does not have possession, custody or control over the books and records of affiliated companies, and that it can only state an understanding or belief of the pertinent Lehigh booking entries. SSU cites to Medivision of East Broward County, Inc. v. HRS, 488 So. 2d 886 (Fla. 1st DCA 1986), and to Michelin Tire Corp. v. Roose, 531 So. 2d 361 (Fla. 4th DCA 1988), review denied, 542 So. 2d 989 (Fla. 1989), for the proposition that the affiliate relationship between SSU and Lehigh is irrelevant absent a finding that they acted "as one" in filing the instant rate proceeding or in transacting business related to the escrow funds referenced by OPC.

SSU's objection is overruled. SSU is directed to respond to this interrogatory within fifteen days of the date of this Order.

Document Request No. 203

By Document Request No. 203, OPC requests that SSU "[p]rovide a copy of the two most recent rate case [o]rders issued by any commission which regulates Superior Water, Light & Power Company."

SSU argues that this document request seeks information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. SSU states that it conducts absolutely no business with Superior Water, Light & Power Company, and that no charges are made directly or indirectly between the two companies. Further, SSU argues that the request seeks information which is not within SSU's possession, custody or control and which OPC could just as readily obtain as SSU from conducting research of the orders of various regulatory commissions.

OPC's request inappropriately solicits legal research, rather than factual information. Therefore, SSU's motion for a protective order is hereby granted with respect to Document Request No. 203. The utility shall not be required to respond to this document request.

Document Requests Nos. 206 and 216

By Document Request No. 206, OPC requests that SSU "provide a copy of any research, reports, letters, or memos prepared or conducted by the Company or on its behalf concerning the Lehigh [e]scrow funds or Lehigh Corporation." By Document Request No. 216, OPC requests that SSU "[p]rovide a copy of all documents prepared by or for the Company concerning the purchase [of] the Orange/Osceola system."

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SSU cites to Rule 1.280, Florida Rules of Civil Procedure, and Southern Bell Tel. & Tel. Co. v. Deason, 632 So. 2d 1377 (Fla. 1994), in objecting to these document requests to the extent that they solicit information which includes attorney-client privilege and attorney work product matter exempt from discovery.

Given the broad scope of these requests, SSU's motion for a protective order is hereby granted to the extent that the requested information is privileged or falls within the work product exception. If any of the information requested under Document Requests Nos. 206 or 216 contains communications between corporate counsel and a corporate employee, the criteria set forth in Deason shall apply in determining whether the matter is protected by the attorney-client privilege. Moreover, communications between the utility's counsel and any consultants or between the utility and any consultants which contain either factual or opinion work product prepared in anticipation of litigation or for hearing need not be produced absent the required showing of need under Rule 1.280, Florida Rules of Civil Procedure.

SSU shall provide the responses to discovery required by this Order to OPC within fifteen days of the date of this Order, unless good cause is shown.

Based on the foregoing, it is

ORDERED by Commissioner Diane K. Kiesling, as Prehearing Officer, that Southern States Utilities, Inc.'s, Motion for Protective Order is granted in part and denied in part as set forth in the body of this Order. It is further

ORDERED that Southern States Utilities, Inc., is hereby directed to respond to the pertinent portions of the Office of Public Counsel's discovery requests as set forth in the body of this Order within fifteen days of the date of this Order.

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By ORDER of Commissioner Diane K. Kiesling, as Prehearing Officer, this 5th day of December, 1995.



DIANE K. KIESLING, Commissioner and
Prehearing Officer

(S E A L)

RGC

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.038(2), Florida Administrative Code, if issued by a Prehearing Officer; (2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or (3) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of Records and Reporting, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.