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LAW OFFICES

MESSER, VICKERS, CAPARELLO, MADSEN, LEWIS, GOLDMAN & METZ  
A PROFESSIONAL ASSOCIATION

SUITE 701, FIRST FLORIDA BANK BUILDING  
215 SOUTH MONROE STREET  
POST OFFICE BOX 1876  
TALLAHASSEE, FLORIDA 32302-1876  
TELEPHONE (904) 222-0720  
TELECOPIER (904) 224-4359

SUITE 900  
2000 PALM BEACH LAKES BOULEVARD  
WEST PALM BEACH, FLORIDA 33409  
TELEPHONE (407) 640-0820  
TELECOPIER (407) 640-8202

ORIGINAL  
FILE COPY

Tallahassee

REPLY TO:

August 20, 1992

Mr. Steve Tribble, Director  
Division of Records and Reporting  
Florida Public Service Commission  
101 East Gaines Street  
Tallahassee, Florida 32399-0850

HAND DELIVERY

Re: FPSC Docket No. 920199-WS

Dear Mr. Tribble:

Enclosed herewith for filing in the above-referenced docket are copies of the following documents:

1. The original and fifteen copies of Southern States' Motion for Protective Order Directed to Public Counsel's Amended Fourth, Amended Fifth and Sixth Sets of Requests for Production of Documents; and

2. A disk in Word Perfect 5.0 containing a copy of the document entitled "Giga.MPO."

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  
Enclosures

cc: Brian P. Armstrong, Esq.

- ACK
- AEA 3
- APP \_\_\_\_\_
- CAF \_\_\_\_\_
- CAW \_\_\_\_\_
- CTR \_\_\_\_\_
- EAC \_\_\_\_\_
- EDG 1W/m
- ENH 4
- OPC \_\_\_\_\_
- RCH \_\_\_\_\_
- EC 1
- AS 1
- TH \_\_\_\_\_

FPSC DIVISION OF RECORDS

DOCUMENT NUMBER-DATE

09473 AUG 20 1992

FPSC-RECORDS/REPORTS

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application of Southern  
States Utilities, Inc. and Deltona  
Utilities, Inc. for Increased  
Water and Wastewater Rates in  
Citrus, Nassau, Seminole, Osceola,  
Duval, Putnam, Charlotte, Lee,  
Lake, Orange, Marion, Volusia,  
Martin, Clay, Brevard, Highlands,  
Collier, Pasco, Hernando, and  
Washington Counties.

Docket No. 920199-WS  
Filed: August 20, 1992

**SOUTHERN STATES' MOTION FOR  
PROTECTIVE ORDER DIRECTED TO  
PUBLIC COUNSEL'S AMENDED FOURTH, AMENDED FIFTH  
AND SIXTH SETS OF REQUESTS FOR  
PRODUCTION OF DOCUMENTS**

TO: HONORABLE BETTY EASLEY  
Commissioner and Prehearing Officer  
101 East Gaines Street  
Tallahassee, Florida 32399

SOUTHERN STATES UTILITIES, INC. and DELTONA UTILITIES, INC.  
(hereinafter referred to collectively as "Southern States"), by and  
through its undersigned counsel, and pursuant to Rule 1.280(c),  
Florida Rules of Civil Procedure, Rule 25-22.034, Florida  
Administrative Code, and Order No. PSC-92-0638-PCO-WS issued July  
10, 1992 (Order Establishing Procedure), requests the Prehearing  
Officer to enter a protective order relieving Southern States of  
the obligation to respond to specific document requests included  
in the OFFICE OF PUBLIC COUNSEL'S ("Public Counsel") Amended  
Fourth, Amended Fifth and Sixth Sets of Requests for Production of  
Documents. In support of its Motion, Southern States states as  
follows:

1. Rule 25-22.034, Florida Administrative Code, provides  
that parties to Commission proceedings "may obtain discovery

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through the means and in the manner provided in Rules 1.280 through 1.400, Florida Rules of Civil Procedure. Under Rule 1.280(c), Florida Rules of Civil Procedure, a party may seek a protective order requiring that discovery not be had or take place only on specified terms or conditions.

2. The Order Establishing Procedure issued in this docket (Order No. PSC-92-0638-PCO-WS) provides, at page 1:

When discovery requests are served and the respondent intends to object to or ask for clarification of the discovery requests, the objection or request for clarification shall be made within ten days of service of the discovery requests.

This provision of the Order Establishing Procedure modifies the otherwise applicable time period for objections and requests for clarification provided in the Florida Rules of Civil Procedure.

3. On August 5, 1992, Public Counsel served its Amended Fourth and Amended Fifth Sets of Requests for Production of Documents on Southern States by United States Mail. On August 6, 1992, Public Counsel served its Sixth Set of Requests for Production of Documents on Southern States by United States Mail. This Motion for Protective Order is timely filed in compliance with the above-stated provisions of the Order Establishing Procedure and Rule 25-22.028(4), Florida Administrative Code, which permits five additional days to respond to a document served by United States Mail.

**Public Counsel's Amended Fourth Set of Requests for Production of Documents**

4. Document Request No. 120 states as follows:

Please provide copies of all rating agency reports dealing with the Company, the Topeka Group and Minnesota Power and Light Company issued from 1990 forward.

Southern States will produce all such documents in its possession. Southern States objects to the production of any documents requested in Document Request No. 120 which are not in its possession as such documents are equally available to Public Counsel.

5. Document Request No. 122 states as follows:

Provide a copy of any S&P documents in the Company's possession, custody or control which show comparative data between the Company and/or the Topeka Group to other water and wastewater utilities.

Southern States will produce all such documents in its possession. Southern States objects to the production of any documents requested in Document Request No. 122 which are not in its possession as such documents are equally available to Public Counsel.

**Public Counsel's Amended Fifth Set of Requests for Production of Documents**

6. Document Request No. 132 states as follows:

Please provide a copy of Staff Advisory Bulletin No. 13, addressed on page 15 of Mr. Lewis' testimony.

Southern States objects to the production of a copy of Staff Advisory Bulletin No. 13. Such document is a public record and equally available to Public Counsel.

Public Counsel's Sixth Set of Requests for Production of Documents

7. Document Request No. 145 states as follows:

Provide a copy of all State and Federal Commission orders in the Company's possession, custody, or control which address the regulatory treatment of acquisition adjustments upon which the Company intends to reply in this case, if any.

Southern States objects to Document Request No. 145 on the grounds that such request seeks information and documents which may comprise legal theories and positions advanced by Southern States and its counsel in this docket. Accordingly, the information and documents sought by Public Counsel in Document Request No. 145 are protected by the work product privilege and exception to discovery under Rule 1.280(b)(3), Florida Rules of Civil Procedure, and appellate court decisions construing that rule. See, e.g., Surf Drugs, Inc. v. Vermette, 236 So.2d 108, 112 (Fla. 1970) (work product includes legal theories, strategies and proposed arguments); Equal Employment Opportunity Commission v. Otto, 75 F.R.D. 624, 627 (D. Md. 1976) (under Rule 26(b)(3), Federal Rules of Civil Procedure -- pertinent language of which is identical to that found in Rule 1.280(b)(3), Florida Rules of Civil Procedure -- defendant not entitled to discover legal conclusions opposing attorney intends to draw from underlying facts of case).

WHEREFORE, Southern States respectfully request the Prehearing Officer to enter a protective order:

(1) relieving Southern States of any duty to respond to Document Request Nos. 132 and 145;

(2) relieving Southern States of any duty to provide documents responsive to Document Request Nos. 120 and 122 which are not in Southern States' possession; and

(3) granting Southern States such other relief as the Prehearing Officer may deem appropriate.

Respectfully submitted,



KENNETH A. HOFFMAN, ESQUIRE  
LAURA L. WILSON, ESQUIRE  
Messer, Vickers, Caparello,  
Madsen, Lewis, Goldman & Metz, P.A.  
P. O. Box 1876  
Tallahassee, Florida 32302-1876  
(904) 222-0720

and

BRIAN P. ARMSTRONG, ESQUIRE  
Southern States Utilities, Inc.  
1000 Color Place  
Apopka, Florida 32703  
(407) 880-0058

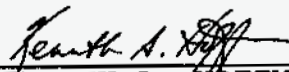
Attorneys for Applicants Southern  
States Utilities, Inc. and  
Deltona Utilities, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Southern States' Motion for Protective Order Directed to Public Counsel's Amended Fourth, Amended Fifth and Sixth Sets of Requests for Production of Documents was furnished by U. S. Mail, this 20th day of August, 1992, to the following:

Harold McLean, Esq.  
Office of Public Counsel  
111 West Madison Street  
Room 812  
Tallahassee, Florida 32399-1400

Matthew Feil, Esq.  
Catherine Bedell, Esq.  
Florida Public Service Commission  
Division of Legal Services  
101 East Gaines Street  
Room 226  
Tallahassee, Florida 32399

By:   
KENNETH A. HOFFMAN, ESQ.