

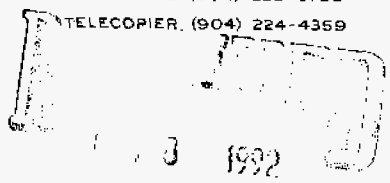
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Tallahassee

REPLY TO:

October 8, 1992

FPSC-RECORDS/REPORTING

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 the following documents:

1. Original and fifteen copies of Southern States' Motion for Protective Order Regarding Public Counsel's Notice of Deposition of Karla Teasley and Brian Armstrong;

ACK 1 2. Original and fifteen copies of Southern States' Request
AFB 3 for Oral Argument on Motion for Protective Order; and

ADP _____ 3. A disk in Word Perfect 5.0 containing a copy of Southern
CAF 1 States' Motion named "GIGA.MDEPO."

CMU _____ Please acknowledge receipt of these documents by stamping the
CTR 1 extra copy of this letter "filed" and returning the same to me.

EAG _____ Thank you for your assistance with this filing.

LEG 1 w/m

LIN 4

OPC _____

RCF _____

SEC 1

WAS 1 KAH/rl
Enclosures

OTH cc: Brian P. Armstrong, Esq.

Sincerely,

Kenneth A. Hoffman
Kenneth A. Hoffman

Request & disk
DOCUMENT NUMBER-DATE
11820 OCT -8 1992

Motion
DOCUMENT NUMBER-DATE
11819 OCT -8 1992

FPSC-RECORDS/REPORTING

FPSC-RECORDS/REPORTING

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: October 8, 1992

SOUTHERN STATES' MOTION FOR PROTECTIVE ORDER REGARDING PUBLIC COUNSEL'S NOTICE OF DEPOSITION OF KARLA TEASLEY AND BRIAN ARMSTRONG

TO: HONORABLE BETTY EASLEY
Commissioner and Prehearing Officer
101 East Gaines Street
Tallahassee, Florida 32399-0850

SOUTHERN STATES UTILITIES, INC. and DELTONA UTILITIES, INC., (hereinafter referred to collectively as "Southern States"), by and through its undersigned counsel, and pursuant to Rules 25-22.034 and 25-22.035(2), Florida Administrative Code and Rule 1.280(c), Florida Rules of Civil Procedure, hereby files its Motion for

ACK [check]
AFA 3
APP
C.F.
C.P.
C.R.
EMP
LED 10/12/92
LIR 4
OPC
RCM
SEC 1
WAS
OTH

Protective Order in response to the Notice of Deposition of Karla Teasley and Brian Armstrong filed by the OFFICE OF PUBLIC COUNSEL ("Public Counsel"). In support of its Motion for Protective Order, Southern States states as follows:

1. On October 2, 1992, Public Counsel, Jack Shreve, filed and served a Notice of Deposition of Karla Teasley and Brian Armstrong. Karla Teasley is Vice President and General Counsel of Southern States. Brian Armstrong serves as in-house regulatory counsel for Southern States and is co-counsel of record in this

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docket.

2. Pursuant to the Notice of Deposition, Mr. Shreve requests that Ms. Teasley and Mr. Armstrong appear for depositions on October 13, 1992, at 10:00 a.m. at the home office of Southern States, in Apopka, Florida.

3. Prior to filing the Notice of Deposition, Public Counsel failed to confer with the undersigned counsel for Southern States to determine if counsel for Southern States was available on October 13, 1992 for depositions. Instead, Public Counsel simply noticed the depositions for October 13, 1992 without regard to the availability of counsel for Southern States. Karla Teasley, Vice President and General Counsel of Southern States, is not counsel of record in this proceeding. Southern States will make Ms. Teasley available for deposition. However, the undersigned counsel for Southern States has previous commitments on October 13, 1992. The undersigned counsel and Ms. Teasley are available for a deposition on October 23, 1992. Accordingly, Southern States requests that any deposition of Ms. Teasley take place in Apopka, Florida on October 23, 1992.

4. Under Rule 25-22.034, Florida Administrative Code and Rule 1.280(c)(1), Florida Rules of Civil Procedure, the Prehearing Officer is authorized to enter a protective order "to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense that justice requires, including ... (1) that the discovery not be had "

5. Southern States will not produce Mr. Armstrong, co-counsel of record, for deposition unless he is served with a subpoena as required by law and is ordered to appear by the Prehearing Officer. Mr. Armstrong has appeared as co-counsel of record in this case since its inception. There is no justifiable reason to require Mr. Armstrong to appear for a deposition. His involvement in this proceeding, have been from the standpoint of providing legal assistance to his client, Southern States, and all activities and communications involving Mr. Armstrong in this rate case are protected by the attorney-client and/or work product privileges.

6. It appears evident that Public Counsel's purpose in making its extraordinary request that Mr. Armstrong appear for a deposition is solely to annoy and harass Mr. Armstrong and Southern States, and to unnecessarily distract Mr. Armstrong from precious time necessary to prepare for the final hearing in this rate case (scheduled for November 6-14, 1992) as well as the final hearing in Docket No. 911188-WS (scheduled for October 28-30, 1992).

7. With the above concerns in mind and mindful of the Prehearing Officer's admonition that parties first attempt to amicably resolve discovery disputes¹, the undersigned counsel spoke with Mr. Shreve on Monday, October 5, 1992, regarding the Notice of Deposition. The undersigned counsel advised Mr. Shreve that there may be legitimate areas of inquiry for Ms. Teasley but that

¹See Order No. PSC-92-1036-PCO-WS, issued September 23, 1992 in this docket, at 9.

the undersigned counsel was not available on October 13, 1992. The undersigned counsel further advised Mr. Shreve that there was no apparent justification for scheduling Mr. Armstrong for deposition. Mr. Shreve advised that he understood Mr. Armstrong's name had been included in specific discovery responses in which Mr. Armstrong apparently prepared the response.

8. The fact of the matter is that Mr. Armstrong is not a witness in this rate case. He is co-counsel of record. Mr. Armstrong is entitled to the same respect and privileges afforded to any other attorney who represents a party before the Commission. The fact that Mr. Armstrong is directly employed by Southern States in no way minimizes the fact that Southern States is Mr. Armstrong's client. Certain written responses to Public Counsel's discovery requests show that the responses were prepared by "counsel for SSU". These responses entail legal objections or arguments, point out to Public Counsel that the information requested previously was provided by the Company, or relate to other non-evidentiary matters i.e., identification of AWWA publications received by the Company. These responses were provided by counsel for SSU, specifically, Mr. Armstrong and the undersigned. The fact that legal counsel for SSU has raised legal objections and arguments and address non-evidentiary matters in response to specific discovery requests in no way makes legal counsel for SSU a fact witness in this case. The name of Brian Armstrong inadvertently appears on the responses to Interrogatory No. 122 and Document Request Nos. 33 and 85. Apparently, Mr.

Armstrong's name was input when the preparer was not known by the individual inputting the data when the responses were due. Revised responses indicating the preparer have been served on Public Counsel.

9. On October 6, 1992, the undersigned held a second discussion with Mr. Shreve regarding the Notice of Deposition. The undersigned reiterated that he was unavailable on October 13, 1992 for a deposition but was available on October 23, 1992. The undersigned advised Mr. Shreve that Mr. Armstrong is co-counsel of record (Mr. Shreve appeared unaware of this fact) and has conferred with the undersigned regarding legal objections to discovery. The undersigned and Mr. Shreve agreed that Public Counsel cannot inquire into matters which are protected by the attorney-client and work product privileges. Finally, Mr. Shreve provided more specific information as to why Public Counsel wishes to take Mr. Armstrong's deposition, that being, to ask Mr. Armstrong questions concerning two meetings which took place between representatives of the Company and the Commission staff prior to the filing of the Application in this docket. Mr. Shreve emphasized that there was nothing illegal or inappropriate about these meetings which makes sense since Public Counsel has engaged in at least one meeting with Southern States' customers and staff, without notice to Southern States, following the filing of the Application in this rate case.

10. Public Counsel's request to depose Mr. Armstrong is simply an unjustified and burdensome request. During the week of September 14-16, 1992, Public Counsel deposed nineteen (19)

witnesses on behalf of Southern States in this docket. Included among these depositions were the depositions of Charles K. Lewis, Helena Loucks and Forrest L. Ludsen. As evident from the transcripts, Public Counsel conducted an in-depth inquiry into these meetings and asked numerous questions to Mr. Lewis, Ms. Loucks and Mr. Ludsen about the meetings. See transcripts of depositions of Charles K. Lewis and Helena Loucks, at 5-27 and 94-97, and of Forrest L. Ludsen, at 11-27².

11. The undersigned counsel for SSU regrets that rate case expense must be incurred to respond to this type of tactic. As previously mentioned, on September 14-16, 1992, Public Counsel spent three full days, including evenings, deposing nineteen (19) witnesses of Southern States. Prior to the service of the Notice of Deposition on October 2, 1992, no notice was given by Public Counsel prior to, during or following those depositions that there would be a request to take Mr. Armstrong's deposition. Absolutely nothing has taken place in the form of discovery, pleadings or otherwise which would give rise to this sudden, unjustified request that co-counsel in this case appear for a deposition.

12. Moreover, Southern States objects to Mr. Shreve's request that Mr. Armstrong appear for a deposition to the extent that such request is ultimately intended to attempt to disqualify Mr. Armstrong from appearing as co-counsel for Southern States in this

²Based on the total of forty pages of transcript of Mr. Ludsen's deposition encompassing Public Counsel's questions and Mr. Ludsen's responses, Public Counsel devoted close to fifty percent of its questions to these meetings.

case.

13. Southern States is aware of no reason to require Mr. Armstrong to take time away from preparation for the final hearings in Docket Nos. 911188-WS and 920199-WS to prepare for and appear at a deposition. The undersigned counsel has advised Mr. Shreve that he will meet with Mr. Shreve and attempt to respond to any further questions he may have regarding the above-referenced meetings if Mr. Shreve withdraws his request to take Mr. Armstrong's deposition. Short of an amicable resolution of this matter, Southern States believes Mr. Shreve should appear before the Prehearing Officer and justify his reasons for noticing Mr. Armstrong for deposition.

WHEREFORE, Southern States respectfully requests that the Prehearing Officer enter an Order granting Southern States the following relief:

1. that the deposition of Karla Teasley take place on October 23, 1992;

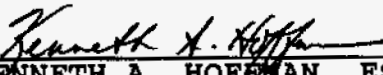
2. that Brian Armstrong, co-counsel of record, be protected from and not required to appear for deposition by the Office of Public Counsel;

3. that if the Prehearing Officer requires Mr. Armstrong to appear for deposition, that such deposition take place on October 23, 1992 in Apopka, Florida, following the issuance and service of a subpoena as required by law, and that the Prehearing Officer's Order specifically state that such deposition may not be used by Public Counsel as an instrument to attempt to disqualify Mr.

Armstrong as co-counsel of record in this proceeding; and

4. that the Prehearing Officer grant Southern States such further relief deemed to be just, equitable and proper.

Respectfully submitted,


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LAURA L. WILSON, ESQUIRE
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and

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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 regarding Public Counsel's Notice of Deposition of Karla Teasley and Brian Armstrong was furnished by hand delivery(*) and/or U. S. Mail, this 24 day of October, 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

Mr. Harry C. Jones, P.E. President
Cypress and Oak Villages Association
91 Cypress Boulevard West
Homasassa, Florida 32646

By: Kenneth A. Hoffman
KENNETH A. HOFFMAN, ESQ.