

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application by Southern States Utilities, Inc. for rate increase and increase in service availability charges for Orange-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: September 7, 1995

SSU'S RESPONSE TO OFFICE OF PUBLIC COUNSEL'S FIRST MOTION TO COMPEL AND FIRST MOTION TO POSTPONE DATE FOR FILING INTERVENOR TESTIMONY

Southern States Utilities, Inc. ("SSU"), by and through its undersigned counsel, and pursuant to Rule 25-22.037(2)(b), Florida Administrative Code, hereby files its Response to the Office of Public Counsel's ("OPC") First Motion to Compel and First Motion to Postpone Date for Filing Intervenor Testimony (hereinafter referred to collectively as the "Motion"). In support of its Response, SSU states as follows:

1. OPC served its First Set of Interrogatories and Document Requests on SSU by mail on July 18, 1995. OPC's Second Set of Document Requests were served by mail on July 24, 1995. OPC alleges in its Motion that SSU's responses were due August 22, 1995, and August 28, 1995, respectively. Once again, OPC is in error.

2. The commencement of a rate case proceeding does not begin until an official date of filing ("ODF") is established. The ODF established for this proceeding is August 2, 1995. According to

DOCUMENT NUMBER-DATE

08774 SEP-7 380

FPSC-RECORDS/REPORTING

Rule 25-22.034, Florida Administrative Code, parties to Commission proceedings "may obtain discovery through the means and in the manner provided in Rules 1.280 through 1.400, Florida Rules of Civil Procedure." Rules 1.340(a) and 1.350(b) of the Florida Rules of Civil Procedure authorize interrogatories and requests for production of documents, respectively, after "commencement of the action." In a rate proceeding, the commencement of the action occurs upon a utility's satisfaction of the minimum filing requirements ("MFRs") and the establishment of an ODF. The Commission takes no action on a utility's rate petition until the MFRs are satisfied and an ODF established. See Sections 367.081(6), 367.082(2), and 367.082(3), Florida Statutes. Since the Commission cannot act on a rate filing until an ODF is established, it stands to reason that the action has not commenced for purposes of conducting discovery. See, e.g., F. Hoffmann LaRoche & Co., Ltd. v. Felix, 512 So.2d 997 (Fla. 3rd DCA 1987) (where court's jurisdiction over defendant was disputed and trial court has not yet decided jurisdiction issue, discovery served on defendant is premature since defendant's party status in question).

3. In accordance with the above, SSU's responses to OPC's First and Second Sets of Discovery were due no earlier than 30 days after August 2, i.e., September 1, 1995. In addition, the Prehearing Officer should take note that it was not until August 4, 1995 that she allowed OPC to serve SSU with more than thirty interrogatories. Order No. PSC-95-0943-PCO-WS, issued August 4, 1995. Therefore, notwithstanding the ODF, any interrogatories

greater than thirty in number should not be deemed served until authorized by the Prehearing officer. Responses to any interrogatories greater than thirty in number cannot be considered due until thirty days after August 4, 1995 at the earliest, i.e., September 5, 1995 (September 3 and 4 were a Sunday and a holiday, respectively).

4. The Prehearing Officer should note that OPC's position in this Motion is inconsistent with the position OPC stated in its August 29, 1995 Motion to Dismiss. In the Motion to Dismiss, OPC argued that SSU has not met the MFRs and that the Commission should rescind all orders which presume that the MFRs have been met.¹ This is the classic case of OPC wanting to have its cake and eat it too. OPC apparently believes it is entitled to discovery prior to the establishment of an ODF but that the Commission may take no action on SSU's Amended Application for Increased Water and Wastewater Rates, etc. until the ODF is established.

5. Attached hereto as Appendix A is a list of OPC discovery requests, the dates those discovery requests were due, and the dates responses to those requests were or, in a limited number of cases, will be served. The objections noted on the Appendix are those made in SSU's August 29, 1995 Motion for Protective Order. The Prehearing Officer should note that although OPC's First Set of Interrogatories number only 99 by OPC's count, a very conservative

¹OPC also argued that the ODF should be the date upon which the Director of the Division of Water and Wastewater determined the MFRs to be complete rather than the date the completed MFRs were filed.

total of those interrogatories, including all subparts, is closer to 300. The same is true of OPC's First Request for Production of Documents, which, while numbered 1 through 156, conservatively total approximately 250 requests, including subparts. As can be seen from the attached Appendix A, the vast majority of SSU's responses were timely served, a number of responses were served prior to the due date, and only a few responses have not been served as of this date; but will likely be served before a ruling on this Motion. OPC's practice has been to use its First Set of Interrogatories and Requests for Production of Documents to solicit a broad range of materials on a broad scope of subject areas. SSU submits that OPC has made up in number anything which it may have lost in time.

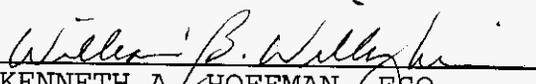
6. OPC seems to argue that it is presumptively prejudiced by so much as one dilatory response to a discovery request and, therefore, OPC should be allowed additional time to file testimony. SSU submits that it is OPC's burden to prove that it is prejudiced by any late submittal of discovery responses and that there is no presumption of prejudice. OPC cites no authority, and SSU is unaware of any authority, which supports OPC's position. Any prejudice which OPC may suffer, and hence any extension for filing its prefiled testimony, must be shown and should be measured by the facts and circumstances surrounding each request: the timing of the request, the scope and subject matter of the discovery request, the relevance of the request to the issues in this proceeding, and the number of days by which the response was delayed. SSU submits

that OPC has not been prejudiced so as to warrant an extension of a date for prefiled testimony at such an early stage in this case. There has been no showing that the timeliness of SSU's service of responses to OPC's discovery requests may in any manner prejudice OPC's ability to take depositions or submit prefiled testimony presently due on November 20, 1995. Moreover, by OPC's logic, any number of days by which SSU responses were early dictate a contraction of OPC's time for prefiling testimony. In conclusion, OPC's Motion to Compel Responses should be denied and its request for additional time to prefile testimony should also be denied.

7. OPC's Request for Oral Argument on its Motion should be denied. OPC has now for the third time ignored Rule 25-22.058, Florida Administrative Code, by not presenting justification for oral argument. The Commission's rules encourage and historically the Commissioners have encouraged parties to make their best case in the parties' written pleadings. Because of the congestion of the Commission's calendar, oral argument is generally reserved for extraordinary events. OPC's Motion is by no means extraordinary. If OPC believes it has been aggrieved such that it must make a written motion for relief, it should have no complaint with being held to the arguments it makes in such a written motion.

WHEREFORE, SSU respectfully requests the Prehearing Officer to enter an Order denying OPC's First Motion to Compel and First Motion to Postpone Date for Filing Intervenor Testimony.

Respectfully submitted,


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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing SSU's Response to Office of Public Counsel's First Motion to Compel and First Motion to Postpone Date for Filing Intervenor Testimony was furnished by U. S. Mail to the following 7th day of September, 1995:

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**DOCKET NO. 950495-WS
1995 RATE CASE**

**OPC Interrogatory/Document Request Checklist
September 7, 1995**

SET	NO.	TYPE (I or D)	DEADLINE TO SERVE RESPONSE	DATE SERVED	COMMENTS
1	1	I	9/1/95	9/5/95	
1	1	D	9/1/95	9/5/95	
1	2	I	9/1/95	8/18/95	
1	2	D	9/1/95	8/29/95	
1	3	I	9/1/95	8/18/95	
1	3	D	9/1/95	8/18/95	
1	4	I	9/1/95	9/5/95	Objection Pending
1	4	D	9/1/95	9/5/95	
1	5	I	9/1/95	8/29/95	
1	5	D	9/1/95	8/18/95	Partial Objection Pending
1	6	I	9/1/95	9/7/95	
1	6	D	9/1/95	8/18/95	
1	7	I	9/1/95	8/29/95	
1	7	D	9/1/95	8/18/95	Partial Objection Pending
1	8	I	9/1/95	9/5/95	
1	8	D	9/1/95	8/29/95	
1	9	I	9/1/95	8/29/95	
1	9	D	9/1/95	9/5/95	
1	10	I	9/1/95	8/29/95	
1	10	D	9/1/95	9/1/95	
1	11	I	9/1/95	8/29/95	
1	11	D	9/1/95	8/23/95	
1	12	I	9/1/95	8/18/95	
1	12	D	9/1/95	9/1/95	
1	13	I	9/1/95	9/1/95	
1	13	D	9/1/95	8/23/95	
1	14	I	9/1/95	8/29/95	
1	14	D	9/1/95	8/29/95	
1	15	I	9/1/95	9/5/95	
1	15	D	9/1/95	9/5/95	
1	16	I	9/1/95	8/18/95	
1	16	D	9/1/95	8/23/95	

APPENDIX "A"

SET	NO.	TYPE (I or D)	DEADLINE TO SERVE RESPONSE	DATE SERVED	COMMENTS
1	17	I	9/1/95	9/1/95	
1	17	D	9/1/95	8/18/95	
1	18	I	9/1/95	9/5/95	
1	18	D	9/1/95	8/18/95	
1	19	I	9/1/95	9/5/95	
1	19	D	9/1/95	8/23/95	
1	20	I	9/1/95	9/5/95	
1	20	D	9/1/95	8/18/95	
1	21	I	9/1/95	9/5/95	
1	21	D	9/1/95	8/18/95	
1	22	I	9/1/95	9/1/95	
1	22	D	9/1/95	8/18/95	
1	23	I	9/1/95	8/18/95	
1	23	D	9/1/95	8/23/95	
1	24	I	9/1/95	9/1/95	
1	24	D	9/1/95	8/18/95	
1	25	I	9/1/95	9/1/95	
1	25	D	9/1/95	8/23/95	
1	26	I	9/1/95	8/31/95	
1	26	D	9/1/95	8/18/95	
1	27	I	9/1/95	8/18/95	
1	27	D	9/1/95	8/23/95	
1	28	I	9/1/95	8/29/95	
1	28	D	9/1/95	9/5/95	
1	29	I	9/1/95	9/5/95	Objection Pending
1	29	D	9/1/95	8/29/95	
1	30	I	9/1/95	9/5/95	
1	30	D	9/1/95	8/29/95	
1	31	I	9/1/95	8/18/95	
1	31	D	9/1/95	9/5/95	
1	32	I	9/1/95	8/29/95	
1	32	D	9/1/95	8/29/95	
1	33	I	9/1/95	8/23/95	
1	33	D	9/1/95	8/29/95	
1	34	I	9/1/95	8/29/95	
1	34	D	9/1/95	8/23/95	

SET	NO.	TYPE (I or D)	DEADLINE TO SERVE RESPONSE	DATE SERVED	COMMENTS
1	35	I	9/1/95	8/29/95	
1	35	D	9/1/95	8/29/95	
1	36	I	9/1/95	8/29/95	
1	36	D	9/1/95	9/1/95	
1	37	I	9/1/95	8/18/95	
1	37	D	9/1/95	8/18/95	
1	38	I	9/1/95	8/29/95	
1	38	D	9/1/95	8/29/95	
1	39	I	9/1/95		Response Est. 9/11/95
1	39	D	9/1/95	8/29/95	
1	40	I	9/1/95	8/18/95	
1	40	D	9/1/95	8/23/95	
1	41	I	9/1/95	8/29/95	
1	41	D	9/1/95	8/18/95	
1	42	I	9/1/95	9/5/95	
1	42	D	9/1/95	8/23/95	
1	43	I	9/1/95	9/1/95	
1	43	D	9/1/95	8/23/95	
1	44	I	9/1/95	9/1/95	
1	44	D	9/1/95	8/18/95	
1	45	I	9/1/95	9/5/95	
1	45	D	9/1/95	8/29/95	Partial Objection Pending
1	46	I	9/1/95	8/18/95	
1	46	D	9/1/95	9/1/95	
1	47	I	9/1/95	8/29/95	
1	47	D	9/1/95	8/23/95	
1	48	I	9/1/95	9/5/95	
1	48	D	9/1/95	8/18/95	
1	49	I	9/1/95	8/18/95	
1	49	D	9/1/95	9/5/95	
1	50	I	9/1/95	9/1/95	
1	50	D	9/1/95		Response Est. 9/11/95
1	51	I	9/1/95	9/5/95	
1	51	D	9/1/95		Objection Pending
1	52	I	9/1/95	8/29/95	
1	52	D	9/1/95		Objection Pending

SET	NO.	TYPE (I or D)	DEADLINE TO SERVE RESPONSE	DATE SERVED	COMMENTS
1	53	I	9/1/95	9/7/95	
1	53	D	9/1/95	8/18/95	
1	54	I	9/1/95	8/23/95	
1	54	D	9/1/95	8/23/95	
1	55	I	9/1/95	8/23/95	
1	55	D	9/1/95	8/18/95	
1	56	I	9/1/95	8/18/95	
1	56	D	9/1/95	8/18/95	
1	57	I	9/1/95	8/23/95	
1	57	D	9/1/95	8/18/95	
1	58	I	9/1/95	8/18/95	
1	58	D	9/1/95	8/29/95	
1	59	I	9/1/95	8/18/95	
1	59	D	9/1/95	8/29/95	
1	60	I	9/1/95	9/5/95	
1	60	D	9/1/95	9/5/95	
1	61	I	9/1/95	9/5/95	
1	61	D	9/1/95	8/18/95	
1	62	I	9/1/95	8/18/95	
1	62	D	9/1/95	8/29/95	
1	63	I	9/1/95	9/1/95	
1	63	D	9/1/95	8/23/95	Partial Objection Pending
1	64	I	9/1/95	8/18/95	
1	64	D	9/1/95	9/5/95	Objection Pending
1	65	I	9/1/95	8/18/95	
1	65	D	9/1/95	9/5/95	Objection Pending
1	66	I	9/1/95	8/29/95	
1	66	D	9/1/95	8/18/95	
1	67	I	9/1/95	8/23/95	
1	67	D	9/1/95	8/29/95	
1	68	I	9/1/95	9/1/95	
1	68	D	9/1/95	9/1/95	
1	69	I	9/1/95	9/5/95	
1	69	D	9/1/95	9/5/95	
1	70	I	9/1/95	8/23/95	
1	70	D	9/1/95	8/29/95	

SET	NO.	TYPE (I or D)	DEADLINE TO SERVE RESPONSE	DATE SERVED	COMMENTS
1	71	I	9/1/95	9/1/95	
1	71	D	9/1/95	9/7/95	
1	72	I	9/1/95	8/18/95	
1	72	D	9/1/95	9/5/95	Objection Pending
1	73	I	9/1/95	8/18/95	
1	73	D	9/1/95	9/5/95	
1	74	I	9/1/95	8/31/95	
1	74	D	9/1/95	9/5/95	
1	75	I	9/1/95		Response Est. 9/11/95
1	75	D	9/1/95	9/1/95	
1	76	I	9/1/95	9/5/95	
1	76	D	9/1/95	9/1/95	
1	77	I	9/1/95	9/1/95	
1	77	D	9/1/95	9/1/95	
1	78	I	9/1/95	8/29/95	
1	78	D	9/1/95	9/1/95	
1	79	I	9/1/95	8/29/95	
1	79	D	9/1/95	9/5/95	
1	80	I	9/1/95	9/5/95	
1	80	D	9/1/95	8/18/95	
1	81	I	9/1/95	9/1/95	
1	81	D	9/1/95	9/7/95	
1	82	I	9/1/95	8/23/95	
1	82	D	9/1/95	9/7/95	Objection Pending
1	83	I	9/1/95	9/1/95	
1	83	D	9/1/95	9/5/95	Objection Pending
1	84	I	9/1/95	8/29/95	
1	84	D	9/1/95	9/1/95	
1	85	I	9/1/95		Response Est. 9/11/95
1	85	D	9/1/95	9/1/95	
1	86	I	9/1/95	8/29/95	
1	86	D	9/1/95	9/5/95	Objection Pending
1	87	I	9/1/95		Response Est. 9/11/95
1	87	D	9/1/95	9/1/95	
1	88	I	9/1/95	9/5/95	
1	88	D	9/1/95	8/18/95	

SET	NO.	TYPE (I or D)	DEADLINE TO SERVE RESPONSE	DATE SERVED	COMMENTS
1	89	I	9/1/95	9/5/95	
1	89	D	9/1/95	9/7/95	
1	90	I	9/1/95	8/29/95	
1	90	D	9/1/95	8/18/95	
1	91	I	9/1/95	8/29/95	
1	91	D	9/1/95	8/29/95	Partial Objection Pending
1	92	I	9/1/95	8/18/95	
1	92	D	9/1/95	9/5/95	
1	93	I	9/1/95	8/18/95	
1	93	D	9/1/95	8/29/95	Partial Objection Pending
1	94	I	9/1/95	9/7/95	
1	94	D	9/1/95	8/29/95	
1	95	I	9/1/95	8/18/95	
1	95	D	9/1/95	9/1/95	
1	96	I	9/1/95	8/18/95	
1	96	D	9/1/95	9/5/95	
1	97	I	9/1/95	8/23/95	
1	97	D	9/1/95	8/29/95	
1	98	I	9/1/95	9/5/95	
1	98	D	9/1/95	9/1/95	
1	99	I	9/1/95	9/1/95	
1	99	D	9/1/95	8/23/95	
2	100	I	8/23/95	8/18/95	
1	100	D	9/1/95	9/1/95	
2	101	I	8/23/95	8/23/95	
1	101	D	9/1/95	9/5/95	
2	102	I	8/23/95	8/29/95	
1	102	D	9/1/95	8/29/95	
2	103	I	8/23/95	8/23/95	
1	103	D	9/1/95	8/18/95	
1	104	D	9/1/95	8/18/95	
1	105	D	9/1/95	9/7/95	
1	106	D	9/1/95	9/5/95	
1	107	D	9/1/95		Response Est. 9/11/95
1	108	D	9/1/95		Partial Objection Pending
1	109	D	9/1/95		Response Est. 9/11/95

SET	NO.	TYPE (I or D)	DEADLINE TO SERVE RESPONSE	DATE SERVED	COMMENTS
1	110	D	9/1/95		Response Est. 9/11/95
1	111	D	9/1/95	9/5/95	
1	112	D	9/1/95	9/1/95	Partial Objection Pending
1	113	D	9/1/95	9/7/95	
1	114	D	9/1/95	9/5/95	Objection Pending
1	115	D	9/1/95	9/1/95	
1	116	D	9/1/95	9/5/95	Objection Pending
1	117	D	9/1/95	9/5/95	
1	118	D	9/1/95	8/29/95	
1	119	D	9/1/95	8/18/95	
1	120	D	9/1/95	9/1/95	
1	121	D	9/1/95	8/29/95	Partial Objection Pending
1	122	D	9/1/95	9/1/95	
1	123	D	9/1/95	8/18/95	
1	124	D	9/1/95	9/1/95	
1	125	D	9/1/95	9/1/95	
1	126	D	9/1/95	9/7/95	
1	127	D	9/1/95		Partial Objection Pending
1	128	D	9/1/95		
1	129	D	9/1/95	9/5/95	
1	130	D	9/1/95	9/1/95	
1	131	D	9/1/95	9/5/95	
1	132	D	9/1/95	8/23/95	
1	133	D	9/1/95	9/5/95	
1	134	D	9/1/95	8/23/95	
1	135	D	9/1/95		Response Est. 9/11/95
1	136	D	9/1/95	8/23/95	
1	137	D	9/1/95	8/29/95	
1	138	D	9/1/95	8/29/95	
1	139	D	9/1/95	8/29/95	
1	140	D	9/1/95	8/29/95	
1	141	D	9/1/95	8/18/95	
1	142	D	9/1/95	8/23/95	
1	143	D	9/1/95	8/29/95	
1	144	D	9/1/95	8/29/95	
1	145	D	9/1/95	9/5/95	
1	146	D	9/1/95	8/29/95	

1	147	D	9/1/95	8/29/95	
1	148	D	9/1/95	9/5/95	
1	149	D	9/1/95	9/5/95	
1	150	D	9/1/95	9/7/95	
1	151	D	9/1/95	9/5/95	
1	152	D	9/1/95	9/5/95	
1	153	D	9/1/95		Response Egt. 9/11/95
1	154	D	9/1/95	8/29/95	
1	155	D	9/1/95	8/23/95	
1	156	D	9/1/95	8/18/95	
2	157	D	8/23/95	8/29/95	
2	158	D	8/23/95	9/5/95	
2	159	D	8/23/95	9/5/95	
2	160	D	8/23/95	9/5/95	