

938



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

ORIGINAL
FILE COPY

September 8, 1995

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

Re: Docket No. 950495-WS

Dear Ms. Bayo:

Enclosed for filing in the above-referenced docket are the original and 15 copies of Citizens' Second Notice to Compel and Second Motion to Postpone Date for Filing Intervenor Testimony.

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

Sincerely,

Harold McLean
Associate Public Counsel

ACK _____
AFA 3 _____
APP _____
CAF _____ HM:bsr
CMH _____ Enclosures
CTP _____
E _____
LET 1 _____
L 5 _____
R _____
S _____
T _____
WAS WAS _____
OTH _____

DOCUMENT NUMBER-DATE
08841 SEP-8 95
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: September 8 1995

CITIZENS' SECOND MOTION TO COMPEL AND SECOND MOTION TO
POSTPONE DATE FOR FILING INTERVENOR TESTIMONY

The Citizens of Florida ("Citizens"), by and through JACK SHREVE, Public Counsel, move the Florida Public Service Commission (commission) to compel Southern States Utilities, Inc. ("SSU") to immediately answer the Citizens' interrogatories numbered 55, and 33; and to immediately produce each document responsive to Citizens' requests for production of documents numbered 90, 103, and 104; the Citizens move the Commission to postpone, on a day-for-day basis, the filing date for intervenor testimony for each day SSU fails to satisfy these discovery requests.

As grounds for the foregoing motions, the Citizens say:

1. The Citizens filed a first set of requests for production of documents and first set of interrogatories on Tuesday, July 18, 1995. Interrogatories 33 and 55 were included within the first set, as were requests for production of documents 90, 103, and 104.

2. SSU filed a pleading on August 29, 1995 which objected to numerous discovery requests; however, none of the above interrogatories or requests for production was challenged by SSU; timely objection to neither interrogatory 33, 55, document request 90, 103, nor 104 has been received by the Citizens.

3. SSU furnished a partial response to the foregoing discovery; the instant motions address the adequacy of the responses.

4. Interrogatory 33 requests as follows:

33. For any and all transfers and/or sales of parcels of land or assets to or from utility operations from non-related or related parties (former or present: parent company, affiliated company, or greater than 5% owners), please provide:

- (a) A description of and state the original cost of such land and/or assets.
- (b) The cost of any and all improvements to such land or assets, itemized by improvement.
- (c) The total sale and/or transfer price, and show in detail how it was determined.
- (d) The date of the sale and/or transfer.
- (e) The amount of gain or loss on such sale and/or transfer, and show in detail how it was calculated and indicate whether it was booked above or below the line for rate making purposes.

SSU Responded as follows:

Transfers and/or sales of parcels of land or assets from related parties to SSU would include those assets transferred to SSU from Lehigh Corporation (an affiliated party) pursuant to a July 6, 1992 Developers Agreement. The details of these projects and costs through December 31, 1994 are reflected on Appendix 33-A. All costs are actual costs and no gain or loss to the utility was calculated or appropriate under purchase accounting. The detail of any subsequent improvements to these projects are available for review at the Apopka offices.

Appendix 33-A contains only information with respect to assets other than land. There is no information contained on this appendix concerning sales of land. Yet in the SSU's objections to the Citizens' first set of document requests, at page 8 of their objections, SSU states: "SSU has acquired land from Lehigh Corporation." SSU's response to Interrogatory 33 and Appendix A is incomplete as it does not include any information concerning land sales between SSU and Lehigh Corporation (an affiliate), to which SSU itself refers in their August 29th pleading.

In the absence of timely objection, the Citizens are entitled to have the complete answer to Interrogatory 33 forthwith.

5. Interrogatory 55 requests as follows:

- (a) For the test year and the preceding five years, has the Company sold any property which had formerly been included in Plant Held for Future Use, Plant in Service, or devoted to utility service?
- (b) If the response to (a) is affirmative, for each sale, describe the property sold; state whether, when, and in what manner it had been included in rate base; show the details of how the gain or loss was calculated; indicate when the sale occurred and to whom; explain how and whether the Company is amortizing such gain or loss; show how such amortization was computed; and state if booked above or below the line for ratemaking purposes.

SSU Responded as follows:

Yes. In responding to this question, only those plants which are now and have been in the past under the FPSC jurisdiction have been included.

SSU's response to part (b) of the question is similarly restricted to plants which are "now and have been in the past under

the FPSC jurisdiction."

The interrogatory is plainly directed to all plant in service, irrespective of whether the PSC has or had jurisdiction.

In the absence of timely objection, the Citizens are entitled to have the complete answer to Interrogatory 55 forthwith.

6. Document Requests 90, 103, and 104

Each of these documents requests asked for documents related to charges from MPL and the Topeka Group to SSU. The Company responded that the information was provided in response to Document Request 106. A response to Document Request 106 has not been provided¹. While SSU's responses to Document requests 90, 103, and 104 give the appearance that they are complete, they are in fact incomplete as the response to 106 has not yet been provided by the SSU.

In the absence of timely objection, the citizens are entitled to a response to Document Requests 90, 103, and 104 forthwith.

7. Discovery is a process where the response to a discovery request is frequently the basis for further discovery focusing more narrowly on an issue. By furnishing incomplete responses to discovery on its due date, the process of building on that discovery and preparing follow-up questions is irrevocably delayed. Every day lost at this point takes a day away from the Citizens' ability to prepare testimony responding to SSU's case.

Every day of delay diminishes the value of the Citizens' point

¹ The failure of SSU to provide a response to POD 106 is addressed in the Citizens' First Motion to Compel.

of entry into the administrative process.

8. The Citizens move the Commission to order SSU to immediately answer the Citizens' interrogatories numbered 33 and 55; and to immediately produce each document responsive to Citizens' requests for production of documents numbered 90, 103, and 104

9. In addition, in order to address the irrevocable delay caused by SSU's incomplete responses to discovery the Citizens move the Commission to postpone, on a day-for-day basis, the filing date for intervenor testimony until SSU fully satisfies these discovery requests. Intervenor testimony is now tentatively scheduled for November 20, 1995. The day-for-day postponement should be determined using that date as a starting point.

Respectfully submitted,

JACK SHREVE
PUBLIC COUNSEL



Harold McLean
Associate 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 8th day of September, 1995.

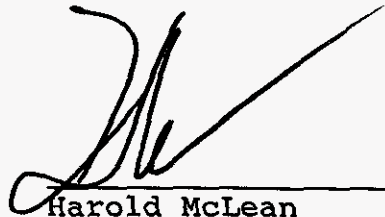
Ken Hoffman, Esq.
William B. Willingham, Esq.
Rutledge, Ecenia, Underwood,
Purnell & Hoffman, P.A.
P.O. Box 551
Tallahassee, FL 32302-0551

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



Harold McLean
Associate Public Counsel