

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application by Southern States Utilities, Inc. for rate increase and increase in service availability charges for 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 29, 1995

FILED
SEP 29 1995

SSU'S RESPONSE TO CITIZENS' SIXTH MOTION TO COMPEL, SIXTH MOTION TO POSTPONE DATE FOR FILING TESTIMONY, AND MOTION TO IMPOSE SANCTIONS

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 this Response to the Citizens' Sixth Motion to Compel, Sixth Motion to Postpone Date for Filing Intervenor Testimony, and Motion to Impose Sanctions (collectively referred to herein as the "Motion") filed by the Office of Public Counsel ("OPC") on September 22, 1995. In support of this Response, SSU states as follows:

1. OPC Motion is completely without legal justification. OPC seeks to have SSU compelled to produce the private property of SSU's independent auditors, Price Waterhouse L.L.P. ("PW") -- property which is not only outside SSU's possession, custody, or control, but in which SSU has no legal interest or right.

2. As stated in OPC's Motion, by Document Request No. 63, OPC sought PW's audit workpapers for 1992-1994. In SSU's August 29,

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DOCUMENT NUMBER-DATE
09727 SEP 29 95
FPSC-RECORDS/REPORTING

1994 Objections to the OPC's First Set of Interrogatories and First Set of Requests for Production of Document Requests and Motion for Protective Order, SSU specifically stated that: (1) the workpapers OPC sought in Document Request No. 63 were not within SSU's possession, custody, or control, (2) the workpapers were the work product of the PW auditors and remained the property of the auditors, and (3) SSU would consent to OPC's reviewing the PW workpapers, as SSU's consent would be needed for any such review. The response SSU served to Document Request No. 63 reiterated these same points.¹

3. PW has been licensed by the State of Florida's Department of Business and Professional Regulation ("DBPR") pursuant to Sections 473.308, 473.309, and 473.3101, Florida Statutes. Section 473.318, Florida Statutes, provides as follows:

All statements, records, schedules, working papers, and memoranda made by a licensee or his employee incident to, or in the course of, professional services to a client, except the reports submitted by the licensee to the client and except for records which are part of the client's records, **shall be and remain the property of the licensee** in the absence of an express agreement between the licensee and the client to the contrary.

(Emphasis supplied.)

¹ As explained herein, in SSU's August 29 Objections and Motion, and in SSU's September 7 Response to OPC's First Motion to Compel, SSU denies any veiled allegation in this OPC Motion that SSU's response to the subject document request was somehow untimely. Moreover, OPC inspected that portion of the PW workpapers which PW allowed OPC to see in Orlando on September 18, the date of OPC's choosing.

4. As stated above, SSU consented to OPC's inspection of PW's audit workpapers.² If PW chose not to allow OPC to review all of PW's workpapers, it was because PW believed it had a clear legal right to refuse OPC access pursuant to Florida law. SSU has no agreement with PW that grants SSU an ownership interest in or entitles SSU the right to copy or inspect all of PW's proprietary workpapers. OPC has had the opportunity to inspect all of the reports PW submitted to SSU, the reports SSU submitted to PW, and all of the PW workpapers to which PW has given SSU access. Accordingly, OPC has reviewed everything which could even arguably be within SSU's possession, custody, or control. The remainder, which SSU has no right to and is not given access to, is the property of PW in accordance with Section 473.318, Florida Statutes.

5. As this Commission must by now have grown accustomed to, OPC cites no authority in support of its Motion. Rather, at the expense of the ratepayers, OPC here advances the novel legal concept that a non-party (PW) forfeits its statutory protection under Section 473.318, Florida Statutes when a discovery request is served on a party (SSU) by OPC.

6. In consideration of the above, SSU should not and cannot be compelled to respond further to OPC's Document Request No. 63, and OPC's motions for more time to file testimony and the sanction

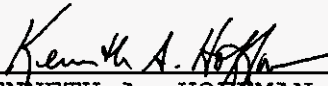
² PW was bound by the Accounting Ethics and Standards Code prescribed by the American Institute of Certified Public Accountant's to obtain client consent prior to allowing any inspection of client information.

of disallowing test year auditing expense should be rejected.³

7. For the reasons stated in SSU's prior responses to OPC's cornucopia of motions, oral argument should not be granted.

WHEREFORE, for the foregoing reasons, SSU respectfully requests that OPC's motion be denied.

Respectfully submitted,



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³ Even if on some basis not within SSU's ken the Commission compelled SSU to respond further to Document Request No. 63, OPC's requests for additional time and sanctions are unwarranted. No authority entitles a party to a comprehensive presumption of prejudice arising from every discovery dispute.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing SSU's Response Citizens' Sixth Motion to Compel, Sixth Motion to Postpone Date for Filing Testimony, and Motion to Impose Sanctions was furnished by U.S. Mail to the following this 29th day of September, 1995:

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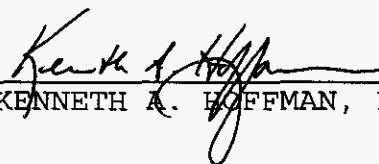
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