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STATE OF FLORIDA
OFFICE OF THE PUBLIC COUNSEL

c/o The Florida Legislature
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ORIGINAL
FILE COPY

October 17, 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-captioned proceedings on behalf of the Citizens of the State of Florida are the original and 15 copies of the Citizens' Fifth Motion to Dismiss.

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

Sincerely,

Charles Beck
Deputy Public Counsel

- ADM
- AFM 3
- AGM CB/bgm
Enclosures
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- LIV 5
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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: October 17, 1995

CITIZENS' FIFTH MOTION TO DISMISS

The Citizens of Florida ("Citizens"), by and through Jack Shreve, Public Counsel, move to dismiss the petition of Southern States Utilities, Inc. ("SSU") for increased rates because of cumulative violations of Commission rules governing discovery by SSU.

1. We have now filed eight motions to compel combined with eight motions to postpone the date for filing intervenor testimony. The combined effect of the matters raised in our first, seventh and eighth motions warrants dismissal of this case without prejudice to SSU filing another case if it should chose to do so. Copies of our first, seventh and eighth motions are attached to this motion as attachments 1, 2 and 3, respectively.

2. These motions show a flagrant disregard of Commission

rules governing discovery by SSU. Time after time, SSU neither objects to discovery nor produces the discovery when due. It simply ignores the discovery requests and sporadically provides some responses when and if it chooses to provide responses.

3. Commission rules and orders set forth a procedure for the parties to follow concerning discovery. SSU must either object ten day after service of discovery or produce the materials thirty days after service of discovery. While SSU has objected to some requests, it simply ignores its obligation to provide responses to numerous others when due. This unending pattern of violating the rules governing discovery severely impedes our ability to prepare for this case and file testimony when due.

4. A deliberate and contumacious disregard of a court's authority warrant dismissal, as will bad faith, willful disregard or gross indifference to an order of a court, or conduct which evinces deliberate callousness. Watson v. Peskoe, 407 So.2d 954, 956 (Fla. 3d D.C.A. 1981). Here, Southern States repeatedly flouts Commission rules regarding the required dates for filing responses to discovery. SSU knows the due dates for discovery responses, but it repeated and willfully disregards those dates as if Commission rules governing discovery do not apply to SSU.

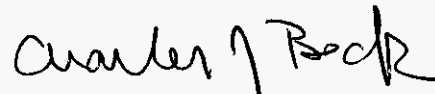
5. Other cases apply a similar standard to entry of a default judgement against a defendant -- a sanction tantamount to

a dismissal against a plaintiff. See Bedflower v. Cushman & Wakefield of Florida, Inc., 510 So.2d 1130, 1131 (Fla. 2d D.C.A. 1987); Morales v. Perez, 445 So.2d 393 (Fla. 3d D.C.A. 1984); Merrill Lynch Pierce Fenner & Smith, Inc., v. Haydu, 413 So.2d 102 (Fla. 3d D.C.A. 1982).

6. The Commission must make SSU know that there are consequences for its actions. As it is, SSU appears to think it can flout Commission rules governing discovery with impunity. The Commission should dismiss this case without prejudice.

Respectfully submitted,

JACK SHREVE
Public Counsel



Charles J. Beck
Deputy Public Counsel

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The Florida Legislature
111 West Madison Street,
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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 17th day of October, 1995.

*Ken Hoffman, Esq.
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Purnell & Hoffman, P.A.
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Marco Island, FL 33969

*Lila Jaber, Esq.
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Fla. Public Service Commission
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Tallahassee, FL 32399

Michael B. Twomey, Esq.
P. O. Box 5256
Tallahassee, Florida
32314-5256

_____/s/
Charles J. Beck
Deputy Public Counsel

ATTACHMENT 1

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: August 31, 1995

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

The Citizens of Florida ("Citizens"), by and through Jack Shreve, Public Counsel, move the Commission to compel Southern States Utilities, Inc. ("SSU") to immediately answer the Citizens' interrogatories numbered 6, 8, 13, 15, 17, 18, 19, 20, 21, 22, 24, 25, 26, 29, 30, 39, 42, 43, 44, 45, 48, 50, 51, 53, 60, 61, 63, 68, 69, 71, 74, 75, 76, 77, 80, 81, 83, 85, 87, 88, 89, 94, 98, and 99, and to immediately produce each document responsive to Citizens' requests for production of documents numbered 4, 9, 10, 12, 15, 28, 31, 36, 46, 49, 50, 68, 69, 71, 73, 74, 75, 76, 77, 78, 79, 81, 84, 85, 87, 89, 92, 95, 96, 98, 100, 101, 105, 106, 107, 109, 110, 115, 117, 120, 122, 124, 125, 126, 128, 129, 130, 131, 133, 135, 145, 148, 149, 150, 151, 152, 153, 158, 159, and 160. In addition, the Citizens request 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.

1. The Citizens served our first set of requests for production of documents and first set of interrogatories on Tuesday, July 18, 1995. Responses were due on Tuesday, August 22, 1995.

2. The Citizens served our second set of requests for production of documents on Monday, July 24, 1995. Responses were due on Monday, August 28, 1995.

3. SSU filed a pleading on August 29, 1995, objecting to much of this discovery. Although we are now in the process of preparing a pleading to address numerous, unwarranted objections contained in SSU's pleading, there is one matter that should be addressed now.

4. SSU has neither objected to nor responded to the following:

(1) interrogatories numbered 6, 8, 13, 15, 17, 18, 19, 20, 21, 22, 24, 25, 26, 29, 30, 39, 42, 43, 44, 45, 48, 50, 51, 53, 60, 61, 63, 68, 69, 71, 74, 75, 76, 77, 80, 81, 83, 85, 87, 88, 89, 94, 98, and 99 contained in our first set of interrogatories;

(2) requests for production of documents numbered 4, 9, 10, 12, 15, 28, 31, 36, 46, 49, 50, 68, 69, 71, 73, 74, 75, 76, 77, 78, 79, 81, 84, 85, 87, 89, 92, 95, 96, 98, 100, 101, 105, 106, 107, 109, 110, 115, 117, 120, 122, 124, 125, 126, 128, 129, 130, 131, 133, 135, 145, 148, 149, 150, 151, 152, and 153

contained in our first set of requests for production of documents;

(3) requests for production of documents numbered 158, 159, and 160 contained in our second set of requests for production of documents.

5. 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 simply ignoring the production of 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 our ability to prepare testimony responding to SSU's case.

6. The Citizens request the Commission to order SSU to immediately answer the Citizens' interrogatories numbered 6, 8, 13, 15, 17, 18, 19, 20, 21, 22, 24, 25, 26, 29, 30, 39, 42, 43, 44, 45, 48, 50, 51, 53, 60, 61, 63, 68, 69, 71, 74, 75, 76, 77, 80, 81, 83, 85, 87, 88, 89, 94, 98, and 99, and to immediately produce each document responsive to Citizens' requests for production of documents numbered 4, 9, 10, 12, 15, 27, 28, 31, 36, 46, 49, 50, 68, 69, 71, 73, 74, 75, 76, 77, 78, 79, 81, 84, 85, 87, 89, 92, 95, 96, 98, 100, 101, 105, 106, 107, 109, 110, 115, 117, 120, 122, 124, 125, 126, 128, 129, 130, 131, 133, 135, 145, 148, 149, 150, 151, 152, 153, 158, 159, and 160.

7. In addition, in order to address the irrevocable delay

caused by SSU simply ignoring production of discovery on its due date, the Citizens request 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



Charles J. Beck
Deputy 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

ATTACHMENT 2

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: October 12, 1995

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

The Citizens of Florida ("Citizens"), by and through Jack Shreve, Public Counsel, move the Commission to compel Southern States Utilities, Inc. ("SSU") to immediately answer the Citizens' interrogatories numbered 104, 107, 108, 110, 111, 112, 113, 114, 116, 117, 118, 119, 124, 125, 127, 128, 130, 131, and 141, and to immediately produce each document responsive to Citizens' requests for production of documents numbered 161, 162, 163, 166, 167, 169, 170, 174. In addition, the Citizens request 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.

1. The Citizens served a third set of interrogatories on

Southern States Utilities, Inc. on Thursday, September 7, 1995 and a third set of requests for production of documents to Southern States Utilities, Inc. on Wednesday, September 6, 1995. Responses were due on Monday, October 9, 1995 and Tuesday, October 3, 1995 respectively.

2. The Citizens served a fourth set of interrogatories on Southern States Utilities, Inc. on Monday, September 11, 1995 and a fourth set of requests for production of documents on Thursday, September 7, 1995. Responses were due on Monday, October 11, 1995 and Wednesday, October 9, 1995 respectively.

3. Certain of the discovery requests received objections in a pleading filed by SSU on September 22, 1995.

4. Confidential treatment was requested for certain other discovery material contained in the third sets by a pleading filed on October 11, 1995.

5. SSU has neither objected to nor responded to the following:

(1) interrogatories numbered 104, 107, 108, 110, 111, 112, 113, 114, 116, 117, 118, 119, 124, 125, 127, 128, 130, 131, and 141 contained in our first set of interrogatories;

(2) requests for production of documents numbered 161, 162, 163, 166, 167, 169, 170, and 174 contained in our first set of requests for production of documents;

6. 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 simply ignoring the production of 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 our ability to prepare testimony responding to SSU's case.

7. The Citizens request the Commission to order SSU to immediately answer the Citizens' interrogatories numbered 104, 107, 108, 110, 111, 112, 113, 114, 116, 117, 118, 119, 124, 125, 127, 128, 130, 131, and 141, and to immediately produce each document responsive to Citizens' requests for production of documents numbered 161, 162, 163, 166, 167, 169, 170, 174.

8. In addition, in order to address the irrevocable delay caused by SSU simply ignoring production of discovery on its due date, the Citizens request 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

/s/

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

ATTACHMENT 3

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: October 13, 1995

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

The Citizens of Florida ("Citizens"), by and through Jack Shreve, Public Counsel, move the Commission to compel Southern States Utilities, Inc. ("SSU") to immediately answer the Citizens' interrogatories numbered 143, 144, 146, 148, 149, 153, 154, 156, 159, 161, 162, 163, 165, 166, 167, 173, 174, 177, 179, and 180, and to immediately produce each document responsive to Citizens' requests for production of documents numbered 178, 182, 183, and 184. In addition, the Citizens request 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.

1. The Citizens served a fifth set of interrogatories (numbered 142 through 180) and a fifth set of requests for

Southern States Utilities, Inc. on Thursday, September 7, 1995 and a third set of requests for production of documents to Southern States Utilities, Inc. on Wednesday, September 6, 1995. Responses were due on Monday, October 9, 1995 and Tuesday, October 3, 1995 respectively.

2. The Citizens served a fourth set of interrogatories on Southern States Utilities, Inc. on Monday, September 11, 1995 and a fourth set of requests for production of documents on Thursday, September 7, 1995. Responses were due on Monday, October 11, 1995 and Wednesday, October 9, 1995 respectively.

3. Certain of the discovery requests received objections in a pleading filed by SSU on September 22, 1995.

4. Confidential treatment was requested for certain other discovery material contained in the third sets by a pleading filed on October 11, 1995.

5. SSU has neither objected to nor responded to the following:

(1) interrogatories numbered 104, 107, 108, 110, 111, 112, 113, 114, 116, 117, 118, 119, 124, 125, 127, 128, 130, 131, and 141 contained in our first set of interrogatories;

(2) requests for production of documents numbered 161, 162, 163, 166, 167, 169, 170, and 174 contained in our first set of requests for production of documents;

6. 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 simply ignoring the production of 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 our ability to prepare testimony responding to SSU's case.

7. The Citizens request the Commission to order SSU to immediately answer the Citizens' interrogatories numbered 104, 107, 108, 110, 111, 112, 113, 114, 116, 117, 118, 119, 124, 125, 127, 128, 130, 131, and 141, and to immediately produce each document responsive to Citizens' requests for production of documents numbered 161, 162, 163, 166, 167, 169, 170, 174.

8. In addition, in order to address the irrevocable delay caused by SSU simply ignoring production of discovery on its due date, the Citizens request 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

/s/

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

ATTACHMENT 3

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
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)	Filed: October 13, 1995
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CITIZENS' EIGHTH MOTION TO COMPEL AND EIGHTH MOTION TO POSTPONE DATE FOR FILING INTERVENOR TESTIMONY

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1. The Citizens served a fifth set of interrogatories (numbered 142 through 180) and a fifth set of requests for

production of documents (numbered 178 through 184) on Southern States Utilities, Inc. on Tuesday, September 12, 1995. Responses were due on Thursday, October 12, 1995. Some responses were hand delivered on October 13, 1995.

2. SSU objected to interrogatory 157 in a pleading dated September 22, 1995.

3. SSU has neither objected to nor responded to the following:

(1) interrogatories numbered 143, 144, 146, 148, 149, 153, 154, 156, 159, 161, 162, 163, 165, 166, 167, 173, 174, 177, 179, and 180 contained in our first set of interrogatories;

(2) requests for production of documents numbered 178, 182, 183, and 184 contained in our first set of requests for production of documents;

4. 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 simply ignoring the production of 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 our ability to prepare testimony responding to SSU's case.

5. The Citizens request the Commission to order SSU to immediately answer the Citizens' interrogatories numbered 143, 144, 146, 148, 149, 153, 154, 156, 159, 161, 162, 163, 165, 166, 167, 173, 174, 177, 179, and 180, and to immediately produce each document responsive to Citizens' requests for production of documents numbered 178, 182, 183, and 184.

6. In addition, in order to address the irrevocable delay caused by SSU simply ignoring production of discovery on its due date, the Citizens request 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 17th day of October, 1995.

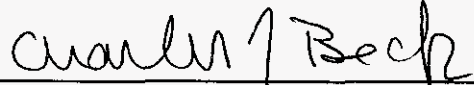
*Ken Hoffman, Esq.
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