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October 24, 1995

**ORIGINAL
FILE COPY**

Ms. Blanca S. Bayo, Director
Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Betty Easley Conference Center
Room 110
Tallahassee, Florida 32399-0850

HAND DELIVERY

Re: Docket No. **950495-WS**

Dear Ms. Bayo:

Enclosed herewith for filing in the above-referenced docket on behalf of Southern States Utilities, Inc. ("SSU") are the following documents:

- 1. Original and fifteen copies of SSU's Response to Citizens' Fifth Motion to Dismiss;
- 2. Original and fifteen copies of SSU's Seventh Motion for Temporary Protective Order; and
- 3. A disk in Word Perfect 6.0 containing a copy of the document entitled "Rate.5Dismiss."

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

Thank you for your assistance with this filing.

Sincerely,


Kenneth A. Hoffman

KAH/r1

cc: All Parties of Record
Tr1b.3

ACK
 AFA
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with motion
DOCUMENT NUMBER-DATE
10465 OCT 24 88
FPSC-RECORDS/REPORTING

Response
DOCUMENT NUMBER-DATE
10464 OCT 24 88
FPSC-RECORDS/REPORTING

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.

ORIGINAL FILE COPY

Docket No. 950495-WS

Filed: October 24, 1995

SSU'S RESPONSE TO CITIZENS' FIFTH MOTION TO DISMISS

SOUTHERN STATES UTILITIES, INC. ("SSU"), by and through its undersigned attorneys, and pursuant to Rule 25-22.037(2)(b), Florida Administrative Code, hereby files this Response to the Citizens' Fifth Motion to Dismiss filed by the Office of Public Counsel ("OPC") on October 17, 1995. In support of this Response, SSU states as follows:

1. OPC's Fifth Motion to Dismiss is specious and should be denied. The Motion seeks dismissal of SSU's rate case based on alleged willful and flagrant violations of Commission rules governing discovery. The facts concerning discovery in this case support the conclusion that SSU has expended substantial resources to ensure OPC with the timely provision of responses to OPC's enormous number of interrogatories, document requests and informal on-site discovery requests. OPC, on the other hand, prefers to "keep SSU busy" by filing motion after motion and unnecessarily increasing rate case expense rather than focusing on what

DOCUMENT NUMBER-DATE 2820 10464 OCT 24 88 FPSC-RECORDS/REPORTING

information OPC has requested, what information OPC has received, and working with counsel for SSU to secure the prompt provision of any outstanding discovery requests not subject to objections. SSU has bent over backwards to provide OPC with the discovery information it has sought and continues to seek -- a far cry from the type of willful and flagrant misconduct which must be shown in order to dismiss this rate case.

2. OPC's accusation that SSU has been repeatedly flouting Commission rules is somewhat ironic in light of OPC's conduct in this proceeding. OPC has filed five requests for oral argument in this proceeding and is yet to comply with Rule 25-22.058(1), Florida Administrative Code. OPC has filed a bevy of motions to dismiss this rate case attacking the various notices SSU has provided to its customers while conveniently overlooking the fact that such notices comply with Rule 25-22.0407, Florida Administrative Code, and have been approved by the Commission Staff. OPC also challenged the sufficiency of SSU's notice to customers for the Sunny Hills service hearing on the ground that the notice did not include SSU's current and proposed rates, again ignoring the fact that the customer notice complied with Rule 25-22.0407(6), F.A.C. (which does not require a utility's current and proposed rates to be included in a service hearing notice) and had been approved by the Commission Staff. OPC's Fifth Motion to Dismiss pointing a finger at SSU for violating Commission discovery rules rings hollow in view of OPC's willingness to ignore Commission rules in this proceeding and, more importantly, in light

of SSU's compliance with Commission discovery rules in this proceeding.

3. The "proof" OPC offers to support dismissal is based on OPC's attachment of its First, Seventh and Eighth Motions to Compel which outline the OPC discovery requests to which SSU allegedly has failed to timely respond or object. These discovery requests are part of the many hundreds of interrogatories, including subparts, and document requests, including subparts, that OPC has served as of this date. SSU's responses to each of these motions to compel demonstrate SSU's due diligence in responding to OPC's discovery requests, the errors in OPC's allegations, and that, apart from SSU's objections to relatively few discovery requests, the motions to compel were unnecessary.

a. In its First Motion to Compel filed on August 31, 1995, OPC alleged that SSU had neither responded nor objected to 44 interrogatories and 60 documents requests.¹ SSU's Response to OPC's First Motion to Compel filed on September 7, 1995, a copy of which is attached hereto as Exhibit A, showed that the facts were that SSU had responded and/or timely objected to 41 of the 44 interrogatories and 53 of the 60 document requests. Most of these 41 interrogatory responses and 53 document request responses were served when they were due with some served as much as two weeks early and others served, at most, one week late.²

¹See Attachment 1 to OPC's Fifth Motion to Dismiss.

²SSU served the responses to the other outstanding discovery requests identified in OPC's First Motion to Compel on the following dates: Interrogatory Nos. 39 (September 15), 75

b. In its Seventh Motion to Compel filed on October 12, 1995³, OPC alleged that SSU had neither objected nor responded to 19 interrogatories and 8 document requests. SSU's Response to OPC's Seventh Motion to Compel, a copy of which is attached hereto as Exhibit B, confirmed that responses to 15 of the 20 interrogatories and 6 of the 8 document requests had been served with the remaining responses⁴ anticipated to be served by October 25, 1995.

c. In its Eighth Motion to Compel filed on October 13, 1995, OPC alleged that SSU had neither objected nor responded to 20 interrogatories and 4 document requests.⁵ SSU's Response to OPC's Eighth Motion to Compel, a copy of which is attached hereto as Exhibit C, confirmed that responses to 13 of the 20 interrogatories and 1 of the 4 document requests had been served with the remaining responses⁶ anticipated to be served on or about October 25, 1995.

d. SSU's Responses to OPC's Seventh and Eighth Motions to Compel also confirm SSU's efforts to cooperate with OPC in the discovery process by providing prompt responses to various OPC on-

(September 29) and 85 (September 15); Document Request Nos. 50 (inspected on-site week of September 17), 107 (September 15), 109 (September 15), 110 (September 15), 128 (September 6), 135 (September 29) and 153 (September 15).

³See Attachment 2 to OPC's Fifth Motion to Dismiss.

⁴SSU's responses to OPC Interrogatory Nos. 107, 116, 125 and 137 and OPC Document Request Nos. 166 and 174.

⁵See Attachment 3 to OPC's Fifth Motion to Dismiss.

⁶SSU's responses to OPC Interrogatory Nos. 143, 144, 153, 154, 156 and 163 and OPC Document Request Nos. 178, 183 and 184.

site discovery requests which were not contained within the hundreds of formal OPC interrogatories and document requests.

4. In a rate case of this magnitude, all parties should make their best efforts to cooperate in the discovery process. OPC is happy to accept SSU's accelerated discovery responses and informal efforts to cooperate on informal discovery responses; however, if a response is not served within 30 days, OPC files a motion to compel responses that it ultimately receives.

5. The facts demonstrate that SSU has timely served OPC with hundreds of discovery responses while serving some earlier and others later than when due. The facts also demonstrate that SSU has worked diligently to comply with and respond to all pending discovery requests, save those subject to objections, and that SSU has not "flouted" Commission rules governing discovery.⁷ Indeed, Prehearing Officer Kiesling's recent order governing the OPC discovery motions and SSU's objections filed in the earlier stages of this proceeding does not even remotely hint of any bad faith, willful disregard or other such conduct on the part of SSU in the discovery process and denied OPC's numerous attempts to postpone the date for the filing of its testimony on the basis of alleged discovery violations.⁸

6. The case law is clear. Dismissal of this rate case is the ultimate sanction and should be employed only in extreme circumstances where there is a finding that SSU has willfully or

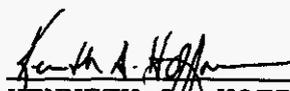
⁷See OPC's Fifth Motion to Dismiss, at 3.

⁸See Order No. PSC-95-1258-PCO-WS issued October 17, 1995.

deliberately refused to comply with a discovery order and where OPC demonstrates prejudice as a result thereof. See Neal v. Neal, 636 So.2d 810, 812 (Fla. 1st DCA 1994) and cases cited therein. The facts show that SSU has complied with the discovery requests of OPC and the discovery process of the Commission in good faith, that SSU has not violated any order of the Commission, and that OPC has suffered no prejudice as a result of the discovery process.

WHEREFORE, for the foregoing reasons, SSU respectfully requests that the Commission deny SSU's Fifth Motion to Dismiss.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing SSU's Response to Citizens' Fifth Motion to Dismiss was furnished by U. S. Mail to the following 24th day of October, 1995:

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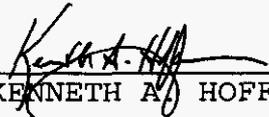
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KENNETH A. HOFFMAN, ESQ.

1995\rate.5dismiss

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, High-)
lands, 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

EXHIBIT A

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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.

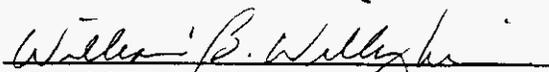
6. OPC seems to argue that it is presumptively prejudiced by so much as one dilatory response to a discovery request and, therefore, OPC should be allowed additional time to file testimony. SSU submits that it is OPC's burden to prove that it is prejudiced by any late submittal of discovery responses 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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KENNETH A. HOFFMAN, ESQ.

1995\rate.97

**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
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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	9/7/95	
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 Est. 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	

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, Highlands, Lake, Lee,)
Marion Martin, Nassau, Orange,)
Osceola, Pasco, Putnam, Seminole,)
St. Johns, St. Lucie, Volusia,)
and Washington Counties.)

Docket No. 950495-WS

Filed: October 19, 1995

SSU'S RESPONSE TO CITIZENS' SEVENTH MOTION
TO COMPEL AND SEVENTH 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 this Response to the Citizens' Seventh Motion to Compel and Seventh Motion to Postpone Date for Filing Intervenor Testimony (the "Motion") filed by the Office of Public Counsel ("OPC") on October 12, 1995.¹ In support of this Response, SSU states as follows:

1. Compelling SSU to provide responses to Interrogatory Nos. 104, 108, 110, 111, 112, 113, 114, 117, 118, 119, 124, 128, 130, 131, and 141 and Document Requests Nos. 161, 162, 163, 167, 169,

¹ On page 2 of OPC's Motion, OPC mistakenly identifies the discovery requests which are the subject of the Motion as being included in OPC's First Set of Interrogatories and First Set of Requests for Production of Documents. Interrogatories through and including Interrogatory No. 131 are from OPC's Third Set of Interrogatories, and Interrogatory No. 141 is from OPC's Fourth Set of Interrogatories. Document Requests Nos. 161 and 162 are from OPC's Third Set of Requests for Production of Documents; the remaining document requests subject to this Motion are from OPC's Fourth Set of Requests for Production of Documents.

and 170 is unnecessary and moot because SSU's response to said discovery requests have already been served. With the exception of the responses to Interrogatories Nos. 117 and 128 and Document Request No. 170, the aforesaid responses were served on October 12, 1995. The response to Interrogatory No. 128 was served on October 17. The responses to Interrogatory No. 117 and Document Request No. 170 were served October 18.

2. SSU submits that compelling responses to the remaining discovery requests mentioned in OPC's Motion is unnecessary as said responses should be served by October 25.

3. In support of its request to postpone the filing date for its testimony, OPC essentially argues that OPC's entire case is presumptively prejudiced by so much as one dilatory response to discovery. SSU submits that no such comprehensive presumption of prejudice exists in the law. OPC cites no authority, and SSU is aware of no authority, supporting OPC's position. SSU submits that it is OPC's burden to prove that it is prejudiced in fact by any dilatory discovery responses. Any prejudice a party suffers from a late discovery response depends on the facts and circumstances of each discovery request and each case, in consideration of the following factors: the timing of the request, the number of days by which a response is late, the scope and subject matter of the request, the relevance of the request to the issues in the proceeding, whether the information requested has been provided through other means or by other discovery responses, and the number of days until prefiled testimony is due. SSU notes that by Order

No. PSC-95-1258-PCO-WS, issued October 13, 1995, in this docket, the Prehearing Officer rejected the same arguments OPC makes in the instant Motion.

4. OPC has failed to show that it has been prejudiced by any late SSU responses; instead OPC relies on a presumption which does not exist in the law. Furthermore, SSU submits OPC has not been prejudiced so as to warrant an extension of the filing date for all or any portion of OPC's prefiled testimony. OPC's testimony is not due until November 20, a month away. Including subparts, OPC discovery requests which SSU has already responded to are several hundred in number. OPC cannot claim comprehensive prejudice by a minimal number of responses which are a few days late. Indeed, taking OPC's argument to its logical extreme, OPC's due date for prefiling testimony should be constricted for responses SSU provided early.

5. OPC's Motion fails to mention SSU's responsiveness to OPC requests made outside formal discovery procedures. On several occasions, OPC has telephoned SSU seeking technical assistance with computer disks SSU provided OPC. SSU has promptly responded to such OPC requests. Recently, OPC requested by telephone that SSU make a revision to one such disk, which SSU agreed to make in less than a week. Further, when OPC conducted an inspection of documents subject to discovery requests at SSU's Apopka offices on the week of September 18, 1995, OPC requested a number of additional documents, a significant portion of which were not within the scope of outstanding discovery. SSU provided OPC with

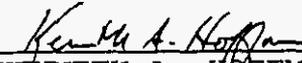
a large number of these documents by mail on October 16, 1995, and SSU intends to ship the remainder to OPC in the next few days.

6. SSU also agreed to ship three copies of certain documents OPC inspected on site the week of September 18 to accommodate OPC staff and consultants residing out of state.

7. OPC's Motion fails to mention the facts surrounding SSU's production of the tax return documents requested by OPC's Document Request Nos. 70 and 71. As stated in SSU's September 29 Response to OPC's Fifth Motion to Compel, SSU produced the tax return documents requested as well as an individual with knowledge of those documents in Apopka with a two-business-day turnaround despite the fact that SSU's response to OPC's Document Request Nos. 70 and 71 informed OPC that at least one week's notice would be needed to produce those documents and OPC's acknowledgment of the required advance notice.

WHEREFORE, in consideration of the foregoing, Southern States Utilities, Inc. requests that the Commission deny the Citizens' Seventh Motion to Compel and Seventh Motion to Postpone Date for Filing Intervenor Testimony.

Respectfully submitted,


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MATTHEW FEIL, ESQ.
Southern States Utilities, Inc.
1000 Color Place
Apopka, FL 32703
(407) 880-0058

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of SSU's Response to Citizens' Seventh Motion to Compel and Seventh Motion to Postpone Date for Filing Intervenor Testimony was furnished by U.S. Mail to the following this 19th day of October, 1995:

Lila Jaber, Esq.
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Tallahassee, FL 32399-0850

W. Allen Case, President
Sugarmill Woods Civic Assoc.
91 Cypress Boulevard West
Homosassa, FL 34446

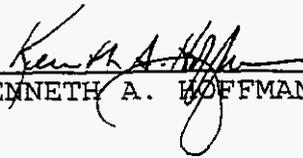
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Robert Bruce Snow, Esq.
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Brooksville, FL 34601-2850



KENNETH A. HOFFMAN, ESQ.

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, Highlands, Lake, Lee,)
Marion Martin, Nassau, Orange,)
Osceola, Pasco, Putnam, Seminole,)
St. Johns, St. Lucie, Volusia,)
and Washington Counties.)

Docket No. 950495-WS

Filed: October 20, 1995

SSU'S RESPONSE TO CITIZENS' EIGHTH MOTION
TO COMPEL AND EIGHTH 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 this Response to the Citizens' Eighth Motion to Compel and Eighth Motion to Postpone Date for Filing Intervenor Testimony (the "Motion") filed by the Office of Public Counsel ("OPC") on October 13, 1995.¹ In support of this Response, SSU states as follows:

1. Compelling SSU to provide responses to Interrogatory Nos. 146, 148, 149, 159, 161, 162, 165, 166, 166, 167, 173, 177, 180 and Document Request No. 182 is unnecessary and moot because SSU's response to said discovery requests have already been served. With

¹ On page 2 of OPC's Motion, OPC mistakenly identifies the discovery requests which are the subject of the Motion as being included in OPC's First Set of Interrogatories and First Set of Requests for Production of Documents. All of the interrogatories and document requests which are the subject of this Motion are from OPC's Fifth Set of Interrogatories and OPC's Fifth Set of Requests for Production of Documents, respectively.

the exception of the responses to Interrogatories Nos. 159, 161, and 180 and Document Request No. 182, the aforesaid responses were served on October 17, 1995. The responses to Interrogatories Nos. 159, 160 and 180 and Document Request No. 182 were served on October 18.

2. SSU submits that compelling responses to the remaining discovery requests mentioned in OPC's Motion is unnecessary as SSU will make every effort to serve said responses by October 25.

3. In support of its request to postpone the filing date for its testimony, OPC essentially argues that OPC's entire case is presumptively prejudiced by so much as one dilatory response to discovery. SSU submits that no such comprehensive presumption of prejudice exists in the law. OPC cites no authority, and SSU is aware of no authority, supporting OPC's position. SSU submits that it is OPC's burden to prove that it is prejudiced in fact by any dilatory discovery responses. Any prejudice a party suffers from a late discovery response depends on the facts and circumstances of each discovery request and each case, in consideration of the following factors: the timing of the request, the number of days by which a response is late, the scope and subject matter of the request, the relevance of the request to the issues in the proceeding, whether the information requested has been provided through other means or by other discovery responses, and the number of days until prefiled testimony is due. SSU notes that by Order No. PSC-95-1258-PCO-WS, issued October 13, 1995, in this docket, the Prehearing Officer rejected the same arguments OPC makes in the

instant Motion.

4. OPC has failed to show that it has been prejudiced by any late SSU responses; instead OPC relies on a presumption which does not exist in the law. Furthermore, SSU submits OPC has not been prejudiced so as to warrant an extension of the filing date for all or any portion of OPC's prefiled testimony. OPC's testimony is not due until November 20, a month away. Including subparts, OPC discovery requests which SSU has already responded to are several hundred in number. OPC cannot claim comprehensive prejudice by a minimal number of responses which are a few days late.

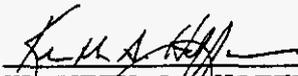
5. OPC's Motion fails to mention SSU's responsiveness to OPC requests made outside formal discovery procedures. On several occasions, OPC has telephoned SSU seeking technical assistance with computer disks SSU provided OPC. SSU has promptly responded to such OPC requests. Recently, OPC requested by telephone that SSU make a revision to one such disk, which SSU agreed to make in less than a week. Further, when OPC conducted an inspection of documents subject to discovery requests at SSU's Apopka offices on the week of September 18, 1995, OPC requested a number of additional documents, a significant portion of which were not within the scope of outstanding discovery. SSU provided OPC with a large number of these documents by mail on October 16, 1995, and SSU intends to ship the remainder to OPC in the next few days.

6. SSU also agreed to ship three copies of certain documents OPC inspected on site the week of September 18 to accommodate OPC staff and consultants residing out of state.

7. OPC's Motion fails to mention the facts surrounding SSU's production of the tax return documents requested by OPC's Document Request Nos. 70 and 71. As stated in SSU's September 29 Response to OPC's Fifth Motion to Compel, SSU produced the tax return documents requested as well as an individual with knowledge of those documents in Apopka with a two-business-day turnaround despite the fact that SSU's response to OPC's Document Request Nos. 70 and 71 informed OPC that at least one week's notice would be needed to produce those documents and OPC's acknowledgment of the required advance notice.

WHEREFORE, in consideration of the foregoing, Southern States Utilities, Inc. requests that the Commission deny the Citizens' Seventh Motion to Compel and Seventh Motion to Postpone Date for Filing Intervenor Testimony.

Respectfully submitted,


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MATTHEW FEIL, ESQ.
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1000 Color Place
Apopka, FL 32703
(407) 880-0058

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing SSU's Response to Citizens' Eighth Motion to Compel and Eighth Motion to Postpone Date for Filing Intervenor Testimony was furnished by U.S. Mail to the following this 20th day of October, 1995:

Lila Jaber, Esq.
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President
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91 Cypress Blvd., West
Homosassa, FL 34446

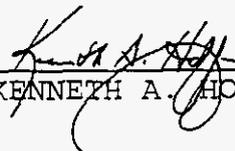
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